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April 22, 2013

VIA E-MAIL (DAVIDENGLER@DAVIDENGLER.COM) AND CERTIFIED MAIL

David L. Engler
100 DeBartolo Place - Suite 315
Boardman, Ohio 44512

839 Southwestern Run
Youngstown, Ohio 44514

**Re: Potts v. American Bottling Company, et al.
Case No. 5:12-cv-02688-JRA**

Dear David:

As you know, we represent The American Bottling Company ("ABC") in connection with the lawsuit filed on behalf of Robert Potts. We are writing this letter pursuant to Federal Rule of Civil Procedure 11. We understand that you will soon receive a similar letter from counsel for Teamsters Local No. 377 ("the Union"). The purpose of this letter is to inform you that the claims against ABC and the Union are without legal or factual basis. As such, if you do not voluntarily dismiss these claims within the next twenty-one (21) days, ABC and the Union may file the attached joint motion, requesting all available sanctions against both Plaintiff and your firm.

The utter lack of support for Plaintiff's claims is clear. First, Plaintiff's September 2009 temporary layoff was in full compliance with the terms of the applicable collective bargaining agreement. Second, the uncontroverted facts show that ABC offered to convert Plaintiff's layoff to a permanent layoff so that he could "bump" into another position based on plant seniority, but he failed to respond to ABC's offer. Third, Plaintiff waived, released, or withdrew the grievances upon which he has based his claims. Finally, Plaintiff's claims are barred by the six month statute of limitations for hybrid §301 actions. For any or all of these reasons, Plaintiff's lawsuit must be dismissed.

I. Plaintiff's Grievances Are Baseless

A. Plaintiff's Temporary Layoff Complied With The CBA

On September 21, 2009, in accordance with the terms of the CBA, ABC placed Plaintiff on temporary layoff due to significant decline in its business. Specifically, Article 14, Section 1 of the applicable CBA provides that "in the event of temporary layoffs **classification seniority** shall prevail." Plaintiff admitted under oath that as of September 21, 2009 he was the least senior employee in the Warehouse Department. (Ex. E to Rule 11 Mot., Plaintiff's July 6, 2011 Deposition ("Pl. Dep."), 209:20-211:2). As such, his claim that "his temporary lay-off did not conform to the provisions of the collective bargaining agreement" is without merit. (Dkt.1, Cmpl. ¶8.)

Also flawed is Plaintiff's claim that ABC "did not have a lack of work" in September 2009 because "during the one year period after the effective date of Potts' [sic] temporary layoff, [ABC] hired new employees to handle jobs for which Potts was qualified" [and] "[e]ach of those new hires had less plant-wide seniority than did Potts." (Dkt. 1, Cmpl. ¶ 7.) This claim is both immaterial and false. Plant-wide seniority does not govern temporary layoffs, as clearly stated in Article 14 Section 1 of the CBA, classification seniority does. Moreover, Plaintiff admitted under oath (1) that as of September 2010 he remained the least senior employee in his classification and (2) when asked to identify any employee with less classification seniority than Plaintiff but who was hired into the Warehouse Department after his September 21, 2009 temporary layoff, Plaintiff could not identify a single individual.¹ (Ex. E to Rule 11 Mot., Pl. Dep., 194:13-196:21; 209:20-211:2; 210:7-211:21; 220:21-221:16.)

B. ABC Offered Plaintiff The Opportunity To "Bump By Seniority" Into A Merchandising Position, But Plaintiff Failed To Respond To ABC's Offer

Plaintiff's claim that "[ABC] failed and refused to afford Potts his contractual rights to avoid being placed on permanent lay-off by exercising his plant-wide seniority to return to work for [ABC]" is also without merit. (Dkt. 1, Cmpl. ¶ 8.) No less than four times, ABC offered Plaintiff the opportunity to "bump by seniority" into a Merchandising position based on his plant-wide seniority. Plaintiff admitted under oath that he received ABC's offer and failed to act on it.

Specifically, during a September 14, 2010 grievance meeting, ABC offered Plaintiff a Merchandising position. (Ex. A to Rule 11 Mot., Sept. 14, 2010 grievance meeting notes.) ABC reduced this offer to writing on September 30, 2010, stating that effective October 15, 2010 it would convert Plaintiff's temporary layoff into a permanent layoff to allow him the opportunity to exercise his contractual rights to "bump by seniority" into the Merchandising Department. (Ex. B to Rule 11

¹ In fact, the evidence establishes that the only new hires were for Merchandising positions. Given that Plaintiff also admitted under oath that ABC offered him the opportunity to bump one of these individuals and assume a Merchandising position (see *infra* Section B), his claim is immaterial for this reason as well.



Mot., September 30, 2010 Correspondence.) ABC requested that Plaintiff respond to this offer in writing within 15 working days, and after not receiving a response from Plaintiff ABC extended this deadline by approximately two months. *Id.* Despite acknowledging receipt of ABC's offer, Plaintiff never communicated his intentions to ABC concerning whether he planned to exercise his bumping rights to move into a new position. (Ex. E to Rule 11 Mot., 197:11-192:2; 228:8-229:14; Ex. F to Rule 11 Mot., October 15, 2010 Correspondence; Ex. C to Rule 11 Mot., October 2, 2010 Correspondence.) Only after Plaintiff failed to respond to ABC's offer despite having three months to consider it, did ABC terminate his employment effective December 1, 2010 in accordance with Article XIV, Section 7, paragraph D of the CBA. (Ex. I to Rule 11 Mot., December 13, 2010 Correspondence.)

Notably, with regard to Plaintiff's failure to respond, the Court stated during the February 5, 2013 Case Management Conference:

If the plant and the company and the union negotiated a process for a return by the plaintiff to his employment, giving him a right to bump plant-wide back into his old job or to a job period, what are we here about?

...

With all due respect, sir, if it becomes readily apparent that there was a process in place to allow the plaintiff to return to his employment in some capacity, it's pretty hard to argue or it will be very difficult to argue the union in some way, shape or form didn't meet its obligation to fairly represent the plaintiff. What is the goal here? The goal would be for any union to try to afford a process for the employee to keep his job. If they did that, and the plaintiff chose, for whatever reason not to avail himself of that, one can be -- it would be very hard pressed to say that the union didn't do their job.

...

If, in fact, plaintiff acknowledges his knowledge of that offer and the company has agreed to it, acceded to it, then that puts the case in a very challenging position for the plaintiff. And I would strongly encourage you, sir, because the costs of all this litigation, if it becomes patently clear that this case is -- the merits of the case are not what they should be, then obviously, I will have two defendants here clamoring for costs and maybe fees, so someone better take a careful look.

(Dkt. 24, 17:22-25, 19:22-20:8, 20:19-21:2.)

II. Plaintiff Released/Withdrew the Grievances Forming The Basis Of His Claims

Irrespective of the above facts, Plaintiff's claims are barred because he cannot establish that he exhausted the applicable grievance procedure with respect to the grievances forming the basis for

his claims. Plaintiff expressly relies on Grievance numbers 11823 and 11824 to support his claims. He cannot do so. As to Grievance 11824, the Settlement Agreement that Plaintiff executed in Case No. 4:11-cv-00149-KSM, unambiguously provides that the only grievances that survive are Grievance Nos. 11823 and 4956. As such, Grievance 11824 is a nullity.

As to Grievance 11823, Plaintiff withdrew this grievance. Indeed, in correspondence dated October 2 and 6, 2010 to the Union, Plaintiff requested that the Union withdraw this grievance, and the Union confirmed the withdrawal of this grievance in correspondence dated October 12, 2010. (Exs. C & D to Rule 11 Mot., October 2, 2010, October 6, 2010, and October 12, 2010 Correspondence.) Moreover, Plaintiff admitted under oath that he withdrew this grievance. (Ex. E to Rule 11 Mot., 196:22-198:1; 225:2-226:10; 230:13-22; 233:8-9). As such, Grievance No. 11823 is also a nullity.

In sum, by virtue of Plaintiff's own conduct, he has no active grievances upon which he can pursue his §301 claim and therefore the claim is barred by his failure to exhaust the grievance procedure. *Delcostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 163 (1983); *Winston v. General Drivers, Warehousemen & Helpers, Local 89*, 93 F.3d 251, 255 (6th Cir. 1996); *Poole v. Budd Co.*, 706 F.2d 181, 183 (6th Cir. 1983) ("It is axiomatic that an aggrieved employee must exhaust any exclusive grievance and arbitration procedures in a collective bargaining agreement prior to bringing a §301(a) suit against the employer."); *Aaron v. Ford Motor Company*, 2011 WL 2149419, *2 (N.D. Ohio) (citing *Wiggins v. Chrysler Corp.*, 728 F. Supp. 463, 466 (N.D. Ohio, 1989)).

III. Plaintiff's Claims Are Time Barred

Even setting aside the above facts, Plaintiff's claims are without merit for the simple fact that his claims are time barred. The statute of limitations for hybrid §301 claims is six months. It is well settled that the statute begins to run when an employee knew or should of known of the alleged acts given rise to the cause of action. *Garrish v. Int'l Union, United Automobile, Aerospace, and Agricultural Implement Workers of America*, 417 F.3d 590, 594 (6th Cir. 2005).

Here, Plaintiff asserts that the Union breached its duty of fair representation by failing to process his grievances and by only processing grievances for "politically favored individuals." (Dkt. 1, Cmpl. ¶11.) According to his own allegations, Plaintiff knew of this alleged conduct as early as February 2012 - eight months before he filed his Complaint. (Dkt. 1, Cmpl. ¶11.)

However, Plaintiff's own admissions and conduct reveal that he actually knew of the alleged conduct long before this. On October 22, 2010, Plaintiff wrote to the Union accusing the Union of "failing to act solely in the interest of the grievant, and refusing to protect my interest in all dealings with my Employer by way of refusing to process my grievance #11824 . . ." (Ex. H to Rule 11 Mot., October 22, 2010 Correspondence.) Plaintiff also testified under oath that he knew as of November 17, 2010 that the Union had allegedly ceased acting on his behalf. (Ex. E to Rule 11 Mot., Pl. Dep. 243, 249-250.) Furthermore, on May 7, 2011, Plaintiff filed a charge with the

National Labor Relations Board in which he signed a Declaration asserting, among other things, that the Union had allegedly "failed to represent him." (Ex. J to Rule 11 Mot., Pl. NLRB Charge.) Given these facts, Plaintiff had until either May 2011 or, at the latest, October 2011, to file his action. As he did not file the Complaint until October 26, 2012, his claims are time barred.

Rule 11 Standard

Rule 11 provides, in relevant part:

(b) Representation to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claim, defenses, and other legal contention therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically, so identified, are reasonably based on a lack of information or belief.

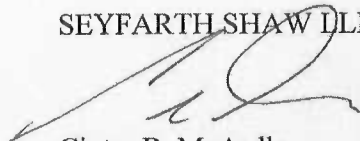
As set forth in detail, it is clear that you failed to do a proper factual investigation prior to filing Plaintiff's Complaint. On February 5, 2013, we advised you of this. Now there can be no question that you are aware of these facts. A refusal to dismiss these meritless, factually unsupported claims in light of Plaintiff's own admissions and the undisputed facts would only serve to intensify this sanctionable conduct.



If you would like to meet to discuss the content of this letter, we are willing to do so; however, if you do not dismiss Plaintiff's claims before the end of the "safe harbor" period, we may file the attached Motion for Sanctions against both Plaintiff and your firm and seek any and all remedies available under Rule 11 (or other available statutory vehicles).

Regards,

SEYFARTH SHAW LLP



Cintra B. McArdle

Cc: George H. Faulkner

Enclosures



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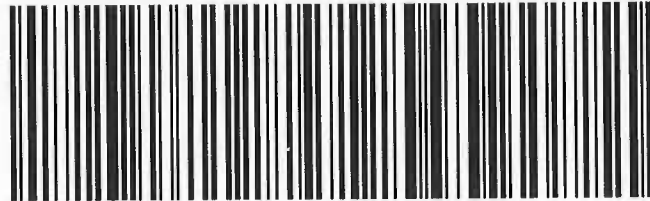


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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT POTTS,)	
)	
Plaintiff,)	Case No. 5:12-cv-02688-JRA
)	
v.)	Judge John R. Adams
)	
AMERICAN BOTTLING COMPANY, et al.,)	
)	
Defendants.)	

DEFENDANTS' JOINT MOTION FOR SANCTIONS UNDER RULE 11

Defendants The American Bottling Company ("ABC") and Teamsters Local No. 377 ("the Union" or "Local 377"), pursuant to Rule 11 of the Federal Rules of Civil Procedure, respectfully move this Court to impose sanctions against Plaintiff and his attorney, David Engler, for asserting claims without a factual and legal basis. In support of this Motion, ABC and the Union state as follows:

FACTUAL BACKGROUND

1. ABC employed Plaintiff Robert Potts as a Warehouse Loader at its Youngstown, Ohio facility from July 2007 through December 2010.
2. Plaintiff was a member of the Union, and therefore his employment at ABC was governed, in part, by a collective bargaining agreement (the "CBA").
3. Article 14, Section 1 of the CBA provides that, "in the event of temporary layoffs classification seniority shall prevail." Classification seniority refers to the department in which an employee worked, such as warehouse, delivery, merchandising. An employee on temporary layoff did not lose his or her seniority until after a period of one year from the date of the temporary layoff. (Dkt. 1, Cmpl. Ex. 4 & 5, Art. 14, Sec. 13.) Only in the event of a permanent layoff does plant-wide seniority govern. (Dkt. 1, Cmpl. Ex. 4 & 5, Art. 14, Sec. 1.)

4. On September 21, 2009, ABC placed Plaintiff on a temporary layoff due to a lack of work. (Dkt. 1, Cmpl. ¶5.)

5. On August 30, 2010, Plaintiff filed Grievance No. 11823, claiming back wages owed as a result of an alleged improper temporary layoff. (Dkt. 1, Cmpl. Ex. 7.)

6. During a September 14, 2010 grievance meeting, ABC offered Plaintiff a Merchandising position. (Ex. A, Sept. 14, 2010 grievance meeting notes.)

7. On September 21, 2010, Plaintiff filed Grievance No. 11824 claiming ABC terminated his seniority without cause and wrongfully discharged him. (Dkt. 1, Cmpl. Ex. 8.)

8. On September 30, 2010, ABC made its employment offer to Plaintiff in writing. Specifically, ABC offered to convert Plaintiff's temporary layoff into a permanent layoff effective October 15, 2010 and give Plaintiff the opportunity to exercise his contractual rights to "bump by seniority" based on his plant-wide seniority. (Ex. B, ABC's Sept. 30, 2010 Correspondence.) In the offer letter, ABC stated that based on seniority the position would be a Merchandiser position. (*Id.*) ABC's offer letter required Plaintiff to respond, in writing, within 15 working days whether he intended to accept the offer. (*Id.*)

9. On October 2 and 6, 2010, Plaintiff wrote to Local 377 and requested that the Union withdraw Grievance No. 11823. (Ex. C, Oct. 2 and 6, 2010 Correspondence.) In his October 2, 2010 correspondence, Plaintiff also stated: "This serves to advise that I am in receipt of the Company's letter date 9/30/2010, mailed via USPS Certified Mail #7002-0510-000-7491-2152, postmarked October 1, 2010." (*Id.*)

10. On October 12, 2010, Local 377 confirmed in writing that Grievance No. 11823 had been withdrawn. (Ex. D, Oct. 12, 2010 Correspondence.)

11. On October 15, 2010, Plaintiff wrote to ABC, but did not state his intention, one way or another, concerning the Merchandising position. (Ex. E, Plaintiff's July 6, 2011 Deposition (Pl. Dep.), 228:8-229:14; Ex. F, Oct. 15, 2010 correspondence).

12. As of October 21, 2010, ABC had still not received an answer from Plaintiff concerning its employment offer (15 working days after ABC's September 30, 2010 correspondence). Therefore, ABC extended Plaintiff's deadline to respond to the offer. (Ex. G, Nov. 10, 2010 correspondence). However, ABC still received no response from Plaintiff concerning the offer.

13. On October 22, 2010, Plaintiff wrote to the Union accusing the Union of "failing to act solely in the interest of the grievant, and refusing to protect my interest in all dealings with my Employer by way of refusing to process my grievance #11824 . . ." (Ex. H, October 22, 2010 Correspondence.)

14. Accordingly, effective December 1, 2010, ABC terminated Plaintiff's employment pursuant to Article 14, Section 7, point D of the CBA, which provides:

Any employee shall lose his seniority (terminated from employment):

...

D. If he fails to return to work within three (3) days after notice from the Company to return unless circumstances beyond his control prevent him from notifying the Company within three (3) days. Such notice shall be made by registered letter.

(Ex. I, Dec. 13, 2010 correspondence; Ex. 4 & 5.)

15. During his deposition in Case No. 4:11-cv-00149-KSM, Plaintiff testified that:

- He could not identify a single employee having less seniority than he did and who was hired into the Warehouse Department during Plaintiff's temporary layoff, and conceded that, as of September 14, 2010, he remained the least seniority in the Warehouse Department. (Ex. E, Pl. Dep., 194:13-196:21; 209:20-211:21; 220:21-221:16.)

- He had received ABC's September 30, 2010 offer letter and never responded to ABC's offer, even though he *did* correspond with ABC after receiving the offer letter. (Ex. E, Pl. Dep. 197:11-198:1; 228:8-229:14.)
- He withdrew Grievance No. 11823. (Ex. E, Pl. Dep. 196:22-198:1; 225:2-226:10; 230:13-22; 233:8-9.)
- He knew as of November 17, 2010 that the Union had allegedly ceased acting on his behalf. (Ex. E, Pl. Dep. 243, 249-250.)

16. On May 7, 2011, Plaintiff filed a charge with the National Labor Relations Board in which he signed a Declaration asserting, among other things, that the Union had allegedly "failed to represent him." (Ex. J, Pl. NLRB Charge.)

17. On or about October 26, 2011, Plaintiff and ABC entered into a settlement agreement for Case No. 4:11-cv-00149-KSM, whereby Potts released all claims that he had or may have had against ABC, subject to certain specific and delineated exceptions. Specifically, only Grievances 11823 and 4956 were excluded from the release. (Dkt. 20, Settlement Agreement.) Therefore, all other grievances, including Grievance No. 11824, were waived and released by the settlement agreement.

18. Despite the above evidence, Plaintiff (through his counsel Mr. Engler) filed the present action under 29 U.S.C. §185, alleging that ABC breached the CBA by failing to provide Plaintiff with his contractual rights to exercise his plant-wide seniority, that Plaintiff was improperly subjected to a temporary layoff and permanent layoff, and that the Union breached its duty to fairly represent him. Plaintiff bases his claims on Grievance Nos. 11823 and 11824. Plaintiff voluntarily withdrew Grievance No. 11823 and voluntarily settled Grievance No. 11824.

19. On February 5, 2013, ABC's counsel advised Mr. Engler that Plaintiff's claims lacked a proper factual and legal basis. Further, on April 22, 2013, ABC's and the Union's counsel sent Mr. Engler letters pursuant to Rule 11 and included a copy of this joint Motion.

(Exs. K & L, April 22, 2013 Correspondence from C. McArdle and G. Faulkner, respectively.)

Despite counsel's receipt of this Motion, Plaintiff did not file a motion to dismiss his claims within the requisite twenty-one days.

ARGUMENT

20. This Court has jurisdiction to impose sanctions under Fed. R. Civ. P. 11 against Plaintiff and his counsel. Rule 11 provides, in relevant part:

- (a) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -
 - (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

21. Rule 11 requires that an attorney certify to the best of his or her "knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . [that] the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." FED. R. CIV. P. 11(b).

22. In the Sixth Circuit, the test for imposing Rule 11 sanctions is whether the individual's conduct was reasonable under the circumstances. *Apostolic Pentecostal Church v.*

Colbert, 169 F.3d 409, 417 (6th Cir. 1999). Not only does Rule 11 measure what was reasonable conduct at the time of pleading, it imposes a “continuing responsibility to review and reevaluate . . . pleadings and where appropriate modify them to conform to Rule 11.” *Merritt v. International Ass’n of Machinists and Aerospace Workers*, 613 F.3d 609, 626 (6th Cir. 2010) (citing *Runfola & Assoc., Inc. v. Spectrum Reporting II, Inc.*, 88 F.3d 368, 374 (6th Cir. 1996)).

23. Sanctions imposed under Rule 11 are intended to be an integral aspect of the judicial process, and the Sixth Circuit has shown no reluctance to impose them where counsel failed to properly investigate the factual basis of a client’s claims after a reasonable opportunity to do so. See *Merritt*, 613 F.3d at 626; *Andretti v. Borla Performance Indus., Inc.*, 426 F.3d 824, 835 (6th Cir. 2005); *Mann v. G & G Mfg., Inc.*, 900 F.2d 953, 960 (6th Cir. 1990) (in affirming award of sanctions, noting, “[a] reasonable pre-filing inquiry would have revealed these facts to plaintiff’s counsel.”).

24. In this lawsuit, Plaintiff claims that ABC hired new employees with “less plant-wide seniority” (Dkt. 1, Cmpl. ¶ 7), but plant-wide seniority does not govern temporary layoffs, as plainly stated in Article 14 Section 1 of CBA. (Dkt. 1, Exs. 4&5). Further, even after engaging in discovery through the prior lawsuit (which concerned the same common facts), Plaintiff could not identify any employees with less seniority (either classification or plant-wide seniority) who were placed into the Warehouse Loader position during his temporary layoff. (Ex. E, Pl. Dep., 194:13-196:21; 209:20-211:21; 220:21-221:16). Plaintiff conceded that even as of September 14, 2010, he had the least seniority in the Warehouse Department. (Ex. E, Pl. Dep., 209:20-211:2). Plaintiff has no legitimate factual basis to assert that his temporary layoff was improper.

25. Plaintiff further claims that “[ABC] failed an refused to afford Potts his contractual rights to avoid being placed on permanent lay-off by exercising his plant-wide seniority.” (Dkt. 1, Cmpl. ¶ 8). This allegation also has no basis in fact. It is undisputed that ABC offered Plaintiff the opportunity to use his plant-wide seniority to “bump” into a Merchandiser position , and that Plaintiff received ABC’s offer and did not act upon it.

26. Even so, there is no active grievance supporting his claim under 29 U.S.C. §185. As to Grievance 11824, the Settlement Agreement that Plaintiff executed in Case No. 4:11-cv-00149-KSM, unambiguously provides that the only grievances that survive are Grievance Nos. 11823 and 4956. As such, Grievance 11824 is a nullity.

27. As to Grievance 11823, Plaintiff withdrew this grievance. Indeed, in correspondence dated October 2 and 6, 2010 to the Union, Plaintiff requested that the Union withdraw this grievance, and the Union confirmed the withdrawal of this grievance in correspondence dated October 12, 2010. (Ex. C, October 2, 2010, October 6, 2010, and October 12, 2010 Correspondence.) Moreover, Plaintiff admitted under oath that he withdrew this grievance. (Ex. E, Pl. Dep., 196:22-198:1; 225:2-226:10; 230:13-22; 233:8-9). As such, Grievance No. 11823 is also a nullity.

28. In sum, by virtue of Plaintiff’s own conduct, he has no active grievances upon which he can pursue his §301 claim and therefore the claim is barred by his failure to exhaust the grievance procedure. *Delcostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 163 (1983); *Winston v. General Drivers, Warehousemen & Helpers, Local 89*, 93 F.3d 251, 255 (6th Cir. 1996); *Poole v. Budd Co.*, 706 F.2d 181, 183 (6th Cir. 1983) (“It is axiomatic that an aggrieved employee must exhaust any exclusive grievance and arbitration procedures in a collective bargaining agreement prior to bringing a §301(a) suit against the employer.”); *Aaron*

v. Ford Motor Company, 2011 WL 2149419, *2 (N.D. Ohio) (citing *Wiggins v. Chrysler Corp.*, 728 F. Supp. 463, 466 (N.D. Ohio, 1989)).

29. Even setting aside the above facts, Plaintiff's claims are without merit for the simple fact that his claims are time barred. The statute of limitations for hybrid §301 claims is six months. It is well settled that the statute begins to run when an employee knew or should of known of the alleged acts given rise to the cause of action. *Garrish v. Int'l Union, United Automobile, Aerospace, and Agricultural Implement Workers of America*, 417 F.3d 590, 594 (6th Cir. 2005).

30. Here, Plaintiff asserts that the Union breached its duty of fair representation by failing to process his grievances and by only processing grievances for "politically favored individuals." (Dkt. 1, Cmpl. ¶11.) According to his own allegations, Plaintiff knew of this alleged conduct as early as February 2012 - eight months before he filed his Complaint. (Dkt. 1, Cmpl. ¶11.)

31. However, Plaintiff's own admissions and conduct reveal that he actually knew of the alleged conduct long before this. On October 22, 2010, Plaintiff wrote to the Union accusing the Union of "failing to act solely in the interest of the grievant, and refusing to protect my interest in all dealings with my Employer by way of refusing to process my grievance #11824" (Ex. H, October 22, 2010 Correspondence.) Plaintiff also testified under oath that he knew as of November 17, 2010 that the Union had allegedly ceased acting on his behalf. (Ex. E, Pl. Dep., 243, 249-250.) Furthermore, on May 7, 2011, Plaintiff filed a charge with the National Labor Relations Board in which he signed a Declaration asserting, among other things, that the Union had allegedly "failed to represent him." (Ex. J, NLRB Charge.) Given these facts, Plaintiff had

until either May 2011 or, at the latest, October 2011, to file his action. As he did not file the Complaint until October 26, 2012, his claims are time barred.

32. As evidenced herein, by maintaining his claims, Plaintiff and Plaintiff's counsel failed to comply with standards of legal practice in this Circuit, and thus sanctions are appropriate under Rule 11.

33. After having made more than one unsuccessful attempt to persuade Plaintiff's counsel to voluntarily dismiss Plaintiff's claims, ABC and Local 377 jointly request that the Court impose sanctions against Plaintiff and Plaintiff's counsel pursuant to Fed. R. Civ. P. 11(c), including, but not limited to, dismissal of the Complaint. Defendants further requests that those sanctions include an award of reasonable costs and attorneys' fees associated with its efforts to resolve this without court intervention and the preparation of this motion.

WHEREFORE, Defendants The American Bottling Company and Teamsters Local 377 respectfully request that this Court impose sanctions against David L. Engler and Plaintiff for maintaining the claims in Plaintiff's Complaint, that Plaintiff's claims be dismissed in their entirety, that Defendants be awarded reasonable costs and attorneys' fees, and any other relief that the Court deems appropriate.

DATED: May 13, 2013

Respectfully submitted,

AMERICAN BOTTLING COMPANY

By s/ Cintra B. McArdle
One of Its Attorneys

TEAMSTERS LOCAL NO. 377

By s/ George H. Faulkner
One of Its Attorneys

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EXHIBIT A

ROBERT POTTS

4143 Jeanette Drive
Warren, Ohio 44484
(330) 856-6103

September 14, 2010

TEAMSTERS LOCAL 377

Attn: *Justin Averell*

1223 Teamster Drive

Youngstown, Ohio 44502

RE: *Grievance # 11823*
POSITION STATEMENT OF GRIEVANT

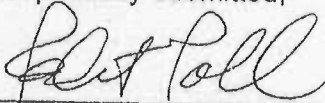
My position is indicated hereunder:

The Company did not apply plant wide seniority for purpose of permanent lay-off.

ISSUE

My name is not last on the plant wide seniority list.

Respectfully submitted,



Robert Potts



9/14/10

Y-town grievance meeting

MLB	John L
Bill Shinnel	Justin A
John Terley	Robert Potts

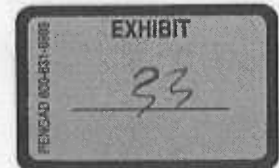
Potts provides position statement

? of Marsh job

- offer verbal
- attacking permanent
layoff language

EXHIBIT B

To: Robert Potts (via certified mail)
CC: Teamsters Local 377; William Stimmel, Branch Manager; John Taraba,
Distribution Supervisor (all via email)
From: Mike Bobal, Associate HR Manager
Date: 9/30/10
Re: Grievance #11823 Unjust Involuntary Layoff



A grievance was received claiming the Company violated Articles 14, 10, 9, 8, 7, 2 of the contract by involuntarily laying off the grievant.

A meeting was held at the Union Hall on 9/14 to discuss this matter. Present for this meeting for the Union was John Lesicko, Justin Averell, and Robert Potts (grievant). Present for the Company were William Stimmel, John Taraba and Mike Bobal.

The Company points out that the grievant was properly laid-off effective 9/21/09 as he was the least senior person in the department that was over-staffed. Specifically, that though Article 14 section 1 points out that permanent layoffs need to follow plant-wide seniority, Article 14, Section 1 also clearly states "in the event of temporary layoffs classification seniority shall prevail." As this was, at the time, a temporary layoff and he had the least seniority, there was no contractual violation.

The process of laying off the grievant was the same method used to temporarily lay off the grievant both on 1/14/08 & 1/12/09. In both of those cases, the grievant was recalled to employment (3/31/08 & 6/8/09, respectively). None of the three layoff letters indicated he was being permanently laid-off. Each letter indicated that the layoff was for an undetermined length of time. The difference is that unlike 2008 and 2009, business needs did not pick-up enough to require a recall to work.

The Company acknowledges that with nearly a year now passing, the situation may result in a loss of seniority. To avoid this possibility (and in consideration of the fact that it has been over a year), the Company is willing to now consider this a "permanent layoff," effective 10/15/10. This will allow the grievant the opportunity to exercise his contractual rights to "bump by seniority and classifications until the least senior employee is displaced" (per Article 14, Section 1). This would, most logically be a Merchandiser position.

Should the grievant wish to pursue this course of action he needs to contact the Company in writing expressing the desire within the 15 working day period that this grievance answer is up for review. His letter should also contain a good phone number in order to be reached. He would then be contacted by a member of the Corporate Talent/ Recruitment team by phone so the driving record can be checked/ reviewed and proof of auto insurance obtained (qualifications).

If the grievant declines this opportunity, then the Company will deal with the grievant's time away from work and possible loss of seniority.

Therefore this grievance is denied.

One last item: The Company and Union Representatives have agreed to hold Grievance #11824 in abeyance until Grievance #11823 is closed. The grievant (same in both items) has **NOT** been terminated by the Employer at this point and no paperwork stating that he has been termed from employment has been sent out. Once Grievance #11823 is finalized, all parties could move onto this new grievance if it is necessary.

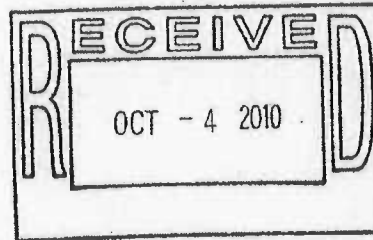
EXHIBIT C

Robert Potts

4143 Jeanette Drive
Warren, Ohio 44484
(330) 856-6103

October 2, 2010

TEAMSTERS LOCAL 377
Attn: JUSTIN AVERELL
1223 Teamster Drive
Youngstown, Ohio 44502



Dear Justin:

This serves to advise that I am in receipt of the Company's letter dated 9/30/2010, mailed via USPS Certified Mail # 7002-0510-0000-7491-2152, postmarked 10/1/2010.

To begin, I hereby reiterate/assert that grievance # 11823 is only a wage claim.

Next, as evidenced, the Company's letter is dated 9/30/2010, and over a year has lapsed in time. The loss of my seniority/discharge already occurred about (10) ten days ago on 9/21/2010; defer to (CBA) Article 14, section (10) and Article 7, section (1).

Moreover, on 9/21/2010, I already had dialogue with both John Taraba and Bill Stimmel by way of my personal appearance at 1142 North Meridian Road, Youngstown, Ohio location, as I signed-in on the Company's sign-in record/log, and presented/submitted my grievance # 11824. I indicate that no union representative/steward was available at the time; defer to the Company's log or sign-in/record or "sheet" at its front door. I now herein request that my timely grievance # 11824 be processed at this time-regarding my improper layoff, discharge or loss of entitled seniority. I'm ready for our discussion.

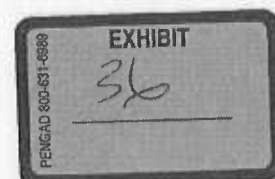
Despite the above, at all times relevant, I assert that I was improperly laid-off in violation of the labor contract (s); defer to Company payroll records; and also at all times relevant I was not the least senior person in classification/department at any incident.

With that said, any issue regarding my lay-off (s) has never been remedied because of the past internal union matters regarding the suspension of Teamster Local 377 officials and the jurisdiction/trusteeship of Charlie Byrnes. The same issues remain at this date.

In closing, the Company's correspondence dated 9/30/2010, recorded as served via USPS Certified Mail, is pertinent evidence of my loss of seniority, termination, or discharge on 9/21/2010. I suggest we withdraw grievance # 11823, so that we may focus on and duly process my grievances (# 11824 and # 7680) at this time, as I believe the Company's letter dated 9/30/2010 was not in good faith, and is an example of fraud.

Sincerely,

Robert Potts



Robert Potts

4143 JEANETTE DRIVE
WARREN, OHIO 44484
(330) 856-6103

October 6, 2010

TEAMSTERS LOCAL 377
Attn: *JUSTIN AVERELL*
1223 Teamster Drive
Youngstown, Ohio 44502

RE: Request for Status Update-REPORT

Dear Justin:

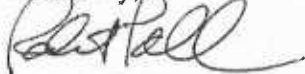
I have assumed that you received and completed your duly review of my correspondence dated 10/2/2010 and 10/4/2010 in preservation of my right to the protection of the contract. I am available for any discussion.

As such, at this time, I hereby respectfully make request for a status update regarding the following identified/itemized grievances:

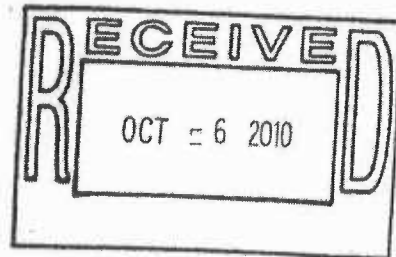
1. *Grievance # 11823, date WITHDRAWN per my request/DISPOSITION;*
2. *Grievance # 11824, ACTIVITY/STATUS UPDATE;*
3. *Grievance # 7680, ACTIVITY/STATUS UPDATE;*
4. *"NEW" Grievance, as requested-that you prepare, sign, and file on my behalf;*
5. *ANY OTHER GRIEVANCE, filed on my behalf/STATUS UPDATE.*

In closing, thank you in advance for any duly assistance and *TEAMSTER REPRESENTATION* in this matter, as I await your informative status/report or update.

Sincerely,



Robert Potts



000007

EXHIBIT D



Chauffeurs, Teamsters, Warehousemen & Helpers Local Union No. 377

AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JOHN J. ANGELO MEMORIAL HALL

PHONE: 330-743-3111 OR 1-800-783-6320 1223 TEAMSTERS DR. YOUNGSTOWN, OHIO 44502-1348
FAX: 330-743-1821

JOHN LESICKO
*Secretary-Treasurer
Principal Officer*

SAM PROSSER
President

KEVIN KOUBECK
Vice President

MELODY CAMPBELL
Recording Secretary

ROBERT BONHOFF
Trustee

DANIEL NODAY
Trustee

DARRELL ZEH
Trustee

JUSTIN AVERELL
Business Representative

GERALD SANDERS
Business Representative

October 12, 2010

Mr. Robert Potts
4143 Jeanette Drive
Warren, OH 44484

Dear Robert,

I am in receipt of your correspondence regarding grievance # 11823, 11824, 7680 and the request of a new grievance to be filed on your behalf covering all differences between yourself and the Employer.

Also, per your request dated October 5, 2010, I will withdraw grievance # 11823 without prejudice and file the new grievance on or about October 13, 2010, at which time I will also request a meeting to bring all parties to the table to remedy contractual violations.

Fraternally yours,

Justin Averell
Business Representative
Teamsters Local No. 377

Certified Mail: 7010 0290 0003 6116 9733

000008

EXHIBIT E

DEPOSITION OF ROBERT A. POTTS

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT A. POTTS,

Plaintiff,

vs. Case No. 4:11-CV-00149-KSM

AMERICAN BOTTLING CO., dba 7-UP,

aka DR. PEPPER SNAPPLE GROUP,

aka DR. PEPPER/SEVEN UP, INC.,

fka CADBURY SCHWEPPE

BOTTLING GROUP, INC.,

Defendant.

- - - - -

DEPOSITION OF ROBERT A. POTTS

Taken on Wednesday, July 6, 2011, at 9:15 a.m.

At the offices of:

Baker Hostetler

3200 PNC Center

1900 East 9th Street

Cleveland, Ohio 44114

Before Steven H. Henschel, a Registered Professional Reporter

in and for the State of Ohio



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DEPOSITION OF ROBERT A. POTTS

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 .</p> <p>3 On behalf of the Plaintiff:</p> <p>4 Guarnieri and Secrest, P.L.L., by</p> <p>5 MICHAEL D. ROSSI, ESQ.</p> <p>6 151 East Market Street</p> <p>7 P.O. Box 4270</p> <p>8 Warren, Ohio 44482</p> <p>9 (330)393-1584</p> <p>10 mrossi@gsfirm.com</p> <p>11 On behalf of the Defendant:</p> <p>12 Seyfarth Shaw, LLP, by</p> <p>13 CINTRA BENTLEY MCARDLE, ESQ.</p> <p>14 131 South Dearborn Street</p> <p>15 Suite 2400</p> <p>16 Chicago, Illinois 60603</p> <p>17 (312)460-5000</p> <p>18 cmcardle@seyfarth.com</p> <p>19 ----</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>	<p>1 A. Sure.</p> <p>2 Q. Today we're going to be</p> <p>3 asking you a series of questions about</p> <p>4 the claims that you filed relating to</p> <p>5 your employment with ABC, the layoffs</p> <p>6 that you incurred and your subsequent</p> <p>7 termination of employment, okay?</p> <p>8 A. Yes.</p> <p>9 Q. Please state your full name.</p> <p>10 A. Robert A. Potts.</p> <p>11 Q. What does the A stand for?</p> <p>12 A. Anthony.</p> <p>13 Q. Have you ever gone by any</p> <p>14 other name?</p> <p>15 A. No.</p> <p>16 Q. Have you ever had your</p> <p>17 deposition taken before?</p> <p>18 A. No.</p> <p>19 Q. Today, since you haven't had</p> <p>20 your deposition taken before, we'll go</p> <p>21 over some ground rules which you may</p> <p>22 have already covered with your attorney</p> <p>23 but I think it's helpful to do this</p> <p>24 morning as well. You have been placed</p> <p>25 under oath and you understand that means</p>
Page 3	Page 5
<p>1 ROBERT A. POTTS, of lawful age,</p> <p>2 called for examination, as provided by</p> <p>3 the Federal Rules of Civil Procedure,</p> <p>4 being by me first duly sworn, as</p> <p>5 hereinafter certified, deposed and said</p> <p>6 as follows:</p> <p>7 EXAMINATION OF ROBERT A. POTTS</p> <p>8 BY-MS.MCARDLE:</p> <p>9 Q. Good morning, Mr. Potts. My</p> <p>10 name is Cintra McArdle, we met just a</p> <p>11 few minutes ago out on the lobby. I'm</p> <p>12 here today to take your deposition in a</p> <p>13 case being filed against the American</p> <p>14 Bottling Company, do you understand</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. And I represent the</p> <p>18 defendant, the American Bottling</p> <p>19 Company, which I will refer to</p> <p>20 interchangeably as ABC, DPSG or the</p> <p>21 company, is that okay with you?</p> <p>22 A. Sure.</p> <p>23 Q. So if I use DPSG or the</p> <p>24 company you'll understand that I mean</p> <p>25 the American Bottling Company?</p>	<p>1 you're to tell the truth under penalty</p> <p>2 of perjury today, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Today I'll ask you a series</p> <p>5 of questions for which you will be</p> <p>6 providing answers. Since we have a</p> <p>7 court reporter, not a videographer, I</p> <p>8 would request that you wait until my</p> <p>9 question is complete before giving your</p> <p>10 answer and I will endeavor to do the</p> <p>11 same, wait until your answer is complete</p> <p>12 before I start another question, is that</p> <p>13 fair?</p> <p>14 A. Can you repeat that, please?</p> <p>15 Q. Sure. All I'm saying is</p> <p>16 let's not step on each other, make sure</p> <p>17 that I've finished asking my question</p> <p>18 before you start answering. I know</p> <p>19 sometimes people think, oh, I know where</p> <p>20 this question is going so they start</p> <p>21 answering. And I'll do the same, I'll</p> <p>22 wait until you finish your answer until</p> <p>23 I ask another question, is that fair?</p> <p>24 A. Fair enough.</p> <p>25 Q. Also, we don't have a</p>



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DEPOSITION OF ROBERT A. POTTS

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<p>1 videographer, as I said, so the court 2 reporter will need audible responses 3 from you meaning a yes or a no if 4 appropriate to the question, not a shake 5 of the head, that won't be able to be 6 picked up by the court reporter. 7 A. Understood. 8 Q. Today I'm asking for your 9 personal knowledge about facts in this 10 case so I would request that you don't 11 speculate or guess about any 12 information, is that correct fair? 13 A. Fair enough. 14 Q. If you don't understand a 15 question I would like you to please ask 16 me as you just did earlier, but if you 17 don't ask me and you don't ask me to 18 clarify that question I'll assume you've 19 understood it, is that fair? 20 A. Fair. 21 Q. At this point I wanted to 22 ask you, are you on any medications? 23 A. No. 24 Q. Is there any reason you 25 can't answer my questions today?</p>	<p>1 Bottling Company, is that correct? 2 A. Let me review the pages. 3 Q. Sure. Take whatever time 4 you need during the deposition, if I 5 give you a document, to review the 6 document. 7 A. Okay. 8 Q. Now, are you able to answer 9 the question whether this is the second 10 amended complaint that you filed on or 11 about March 1st, 2011 against the 12 American Bottling Company? 13 A. It is. 14 - - - - - 15 (Thereupon, Deposition 16 Exhibit-2 was marked for 17 purposes of identification.) 18 - - - - - 19 Q. I'm handing you what's been 20 marked Deposition Exhibit 2, have you 21 seen these documents before? 22 A. Yes, I have. 23 Q. And do you know what these 24 documents are? 25 A. Yes.</p>
Page 7	Page 9
<p>1 A. I don't understand, what do 2 you mean? 3 Q. Is there anything that would 4 prevent you from providing full and 5 complete answers to my questions today? 6 A. No. 7 Q. What I'd like to do first is 8 introduce some preliminary exhibits and 9 identify them and then we'll start into 10 the line of questioning. 11 A. Sure. 12 - - - - - 13 (Thereupon, Deposition 14 Exhibit-1 was marked for 15 purposes of identification.) 16 - - - - - 17 Q. Handing you what's been 18 marked Deposition Exhibit 1, do you know 19 what this document is? 20 A. Yes. 21 Q. What is it? 22 A. The second amended complaint. 23 Q. This is the second amended 24 complaint that you filed on or about 25 March 1st, 2011 against the American</p>	<p>1 Q. What are they? 2 A. Inter correspondence between 3 my counsel and yourself, and Michelle, I 4 can't pronounce her last name. 5 Q. Anselmo? 6 A. Anselmo. 7 Q. A N S E L M O ? 8 A. Yes. 9 Q. Do you have an understanding 10 that these represent what are called 11 initial disclosures in this case, 12 meaning that you've set forth certain 13 individuals that you believe have 14 knowledge concerning your claims in this 15 case? 16 A. Yes. 17 - - - - - 18 (Thereupon, Deposition 19 Exhibit-3 was marked for 20 purposes of identification.) 21 - - - - - 22 Q. Showing you what's been 23 marked Deposition Exhibit 3, do you 24 recognize this document? 25 A. Yes.</p>



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DEPOSITION OF ROBERT A. POTTS

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<p>1 Q. What is this document?</p> <p>2 A. It's an answer to the first</p> <p>3 set of interrogatories to plaintiff.</p> <p>4 Q. And did you provide --</p> <p>5 without telling me the substance of</p> <p>6 those communications, did you provide</p> <p>7 certain information to your attorney so</p> <p>8 that questions from the company could be</p> <p>9 answered during the course of discovery?</p> <p>10 A. Yes.</p> <p>11 Q. And in providing that</p> <p>12 information, if we could flip to the</p> <p>13 seventh page from the back, roughly,</p> <p>14 it's a page that I believe bears your</p> <p>15 signature?</p> <p>16 A. Yes.</p> <p>17 Q. Is that your signature?</p> <p>18 A. Yes.</p> <p>19 Q. Pursuant to Federal Rule of</p> <p>20 Civil Procedure 33 you are required to</p> <p>21 answer interrogatories served to you by</p> <p>22 the defendant under oath under penalty</p> <p>23 of perjury. I notice you have signed</p> <p>24 pursuant to a notary signature but I'm</p> <p>25 going to ask you, is the information</p>	<p>1 document?</p> <p>2 A. Okay.</p> <p>3 Q. Do you see those?</p> <p>4 A. Yes.</p> <p>5 Q. And, again, feel free to</p> <p>6 flip through the entire document but my</p> <p>7 question is, are those your handwritten</p> <p>8 notes?</p> <p>9 A. They appear to be.</p> <p>10 Q. And the information that you</p> <p>11 provided in the handwriting of</p> <p>12 Deposition Exhibit 4, which are your</p> <p>13 handwritten notes, that is information</p> <p>14 designating certain documents as</p> <p>15 responsive to the American Bottling</p> <p>16 Company's document request in this case,</p> <p>17 is that right?</p> <p>18 A. Repeat that, please.</p> <p>19 Q. Sure. The handwritten notes</p> <p>20 that you have set forth in a portion of</p> <p>21 Deposition Exhibit 4 are your answers to</p> <p>22 designate certain documents as</p> <p>23 responsive to the American Bottling</p> <p>24 Company's document request, is that</p> <p>25 right?</p>
Page 11	Page 13
<p>1 that you provided to your attorney and</p> <p>2 set forth in this document true and</p> <p>3 accurate under penalty of perjury?</p> <p>4 A. Yes.</p> <p>5 - - - - -</p> <p>6 (Thereupon, Deposition</p> <p>7 Exhibit-4 was marked for</p> <p>8 purposes of identification.)</p> <p>9 - - - - -</p> <p>10 Q. Handing you what's been</p> <p>11 marked Deposition Exhibit 4, it's a</p> <p>12 multiple document exhibit that appear to</p> <p>13 look the same but you can tell me if I</p> <p>14 understand this correctly, the first set</p> <p>15 has some handwritten notes, if you flip</p> <p>16 through the documents clipped together,</p> <p>17 if you the flip through them there are</p> <p>18 some handwritten notes. I think I've</p> <p>19 clipped mine differently than yours so</p> <p>20 please look at the second clipped</p> <p>21 document.</p> <p>22 A. Two documents clipped</p> <p>23 together?</p> <p>24 Q. Correct. And there's some</p> <p>25 handwritten notes in that second</p>	<p>1 A. Appears correct.</p> <p>2 - - - - -</p> <p>3 (Thereupon, Deposition</p> <p>4 Exhibit-5 was marked for</p> <p>5 purposes of identification.)</p> <p>6 - - - - -</p> <p>7 Q. Showing you what's been</p> <p>8 marked Deposition Exhibit 5, have you</p> <p>9 ever seen this document before?</p> <p>10 A. I don't think so.</p> <p>11 Q. Deposition Exhibit 5 appears</p> <p>12 to be a correspondence from Mike Rossi</p> <p>13 to myself dated May 3rd, 2007.</p> <p>14 A. Okay.</p> <p>15 Q. In it it refers to certain</p> <p>16 discovery issues that were presented and</p> <p>17 provides some, what appears to be,</p> <p>18 information about discovery. My question</p> <p>19 for you is, on the second page it</p> <p>20 states, item 7, request number 42,</p> <p>21 "Plaintiff has not incurred any out of</p> <p>22 pocket medical expenses not covered by</p> <p>23 insurance. I'll let you know if and</p> <p>24 when he does." Is that an accurate</p> <p>25 statement as of today, this is dated May</p>



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DEPOSITION OF ROBERT A. POTTS

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<p>1 3rd, 2011, but as of today have you 2 incurred any out of pocket expenses that 3 are not covered by insurance? 4 A. Not at this time. 5 ----- 6 (Thereupon, Deposition 7 Exhibit-6 was marked for 8 purposes of identification.) 9 ----- 10 Q. Showing you what's been 11 marked Deposition Exhibit 6, have you 12 seen this document before? 13 A. Yes. 14 Q. And this document is 15 correspondence from Mr. Rossi to myself 16 this time dated May 25th, 2011, is that 17 correct? 18 A. Say that again, please. 19 Q. Sure. Deposition Exhibit 6 20 is correspondence from Mr. Rossi to 21 myself dated May 25th, 2011, is that 22 correct? 23 A. That's correct. 24 Q. There's an attachment to this 25 correspondence, if you look at the</p>	<p>1 A. Whatever I had in my storage 2 box. 3 Q. And that's what I'm getting 4 at. So you had a storage box? 5 A. Just like a Kinko style box, 6 bunch of paperwork in it. 7 Q. How many storage boxes did 8 you have, just the one? 9 A. For this matter. 10 Q. Yes. And I am speaking of 11 this matter. So just for this matter 12 you had one storage box? 13 A. Yes. 14 Q. Where did you keep that 15 storage box? 16 A. At the residence. 17 Q. Is that your Jeanette 18 Drive -- 19 A. Correct. 20 Q. -- residence? And in that 21 box is it fair to say that you kept 22 copies of documents that you sent to the 23 American Bottling Company in part? 24 A. Some. 25 Q. And other documents were</p>
Page 15	Page 17
<p>1 attachment, is that your signature on 2 the lower right-hand portion of the 3 document? 4 A. Yes. 5 Q. We looked at Deposition 6 Exhibit 4, which were your responses to 7 document requests issued by the American 8 Bottling Company in this case. I'm not 9 going to ask you any specific questions 10 about the document but certainly feel 11 free to pull it out if you'd like to 12 look at it. My question for you is 13 more general, how did you go about 14 searching for documents to provide to 15 your attorney in this case? 16 A. Please expand, what do you 17 mean? 18 Q. How did you -- I'm assuming 19 you received some information from your 20 attorney. Again, I don't want to know 21 what the conversations were, but in 22 response to those questions or 23 information how did you go about 24 gathering documents to provide them to 25 your attorney for purposes of this case?</p>	<p>1 documents you received from the American 2 Bottling Company, is that correct? 3 A. I received some documents, 4 yes. 5 Q. So the box contained at 6 least correspondence that you sent to 7 the American Bottling Company and 8 correspondence you received from the 9 American Bottling Company, are there any 10 other categories of documents that 11 existed within that storage box? 12 A. Paperwork in general, yes. 13 Q. I'm sorry, paperwork in 14 general, yes, I'm not sure what you 15 mean? 16 A. Just paperwork in general as 17 documents, referring to documents, the 18 term documents. 19 Q. What type of paperwork are 20 you referring to? 21 A. Eight and a half by 11 and a 22 half, just papers. 23 Q. Did they relate to your 24 employment with the American Bottling 25 Company?</p>



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<p>1 A. Yes.</p> <p>2 Q. Did you maintain this storage</p> <p>3 box because you wanted to keep a record</p> <p>4 of events that occurred during your</p> <p>5 employment with the American Bottling</p> <p>6 Company?</p> <p>7 A. I generally just throw stuff</p> <p>8 in boxes, if it's needed I got somewhere</p> <p>9 to look for it.</p> <p>10 Q. How do you determine what</p> <p>11 you will retain and what you will throw</p> <p>12 away for purposes of the storage box</p> <p>13 that related to documents concerning the</p> <p>14 American Bottling Company?</p> <p>15 A. Based on my opinion.</p> <p>16 Q. And what opinion is that,</p> <p>17 sir?</p> <p>18 A. If I just decide to keep</p> <p>19 something I throw it in a box. If not,</p> <p>20 I don't think it's necessary to keep, I</p> <p>21 just throw it away, trash.</p> <p>22 Q. So is it fair to say that</p> <p>23 you made some determination that items</p> <p>24 that you did not retain were not</p> <p>25 important or relevant to your employment</p>	<p>1 questions concerning your employment I</p> <p>2 want to go over generally the claims</p> <p>3 that you've asserted against the</p> <p>4 American Bottling Company, okay?</p> <p>5 A. Okay.</p> <p>6 Q. My understanding is that</p> <p>7 you've asserted two claims against the</p> <p>8 American Bottling Company. One is an</p> <p>9 Ohio Whistleblower Statute claim and one</p> <p>10 relates to a COBRA notice violation, is</p> <p>11 that correct?</p> <p>12 A. I didn't hear the first</p> <p>13 part.</p> <p>14 Q. Sure. And I did notice you</p> <p>15 put your hand up to your ear, please</p> <p>16 let me know if at any time you cannot</p> <p>17 hear the questions I've asked you. If</p> <p>18 you don't let me know that I'll</p> <p>19 certainly assume you have so I'd like to</p> <p>20 make sure we're on the same page.</p> <p>21 A. Sure.</p> <p>22 Q. And I do sometimes talk</p> <p>23 softly, so please let me know.</p> <p>24 A. Absolutely.</p> <p>25 Q. Fair?</p>
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<p>1 at the American Bottling Company?</p> <p>2 A. Say that again, please.</p> <p>3 Q. Sure. Is it fair to say</p> <p>4 then documents that you chose not to</p> <p>5 retain and that you chose to throw away</p> <p>6 as trash were not important to your</p> <p>7 employment at the American Bottling</p> <p>8 Company?</p> <p>9 A. You could say that. I kept</p> <p>10 whatever I thought that I should keep.</p> <p>11 Q. And how did you decide what</p> <p>12 documents to provide to your counsel</p> <p>13 from that storage box?</p> <p>14 A. I just give him everything.</p> <p>15 Q. And I didn't ask you this so</p> <p>16 I'll ask you now, were there any other</p> <p>17 locations that you maintained documents</p> <p>18 relating to your employment at the</p> <p>19 American Bottling Company other than the</p> <p>20 storage box?</p> <p>21 A. No.</p> <p>22 Q. Do you have an e-mail</p> <p>23 account that you use?</p> <p>24 A. No.</p> <p>25 Q. Before we get into detail</p>	<p>1 A. Fair enough.</p> <p>2 Q. All right. My understanding</p> <p>3 of the claims that you've asserted in</p> <p>4 this case are that you've asserted two</p> <p>5 claims, one is an Ohio Whistleblower</p> <p>6 Statute claim and one is a COBRA notice</p> <p>7 violation claim, is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. You have no other claims</p> <p>10 asserted against the American Bottling</p> <p>11 Company in this litigation, correct?</p> <p>12 A. At this time, no.</p> <p>13 Q. Is there a time that you</p> <p>14 anticipate adding additional claims to</p> <p>15 your lawsuit against the American</p> <p>16 Bottling Company?</p> <p>17 A. Not that I know of. If my</p> <p>18 attorney suggests anything I'm open to</p> <p>19 any legal advice, counsel.</p> <p>20 Q. So let's talk in a little</p> <p>21 bit more detail about the two claims</p> <p>22 that you've asserted against the</p> <p>23 American Bottling Company. I'd like to</p> <p>24 talk first about the whistleblower</p> <p>25 claim, okay?</p>



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<p>1 A. Okay.</p> <p>2 Q. Your claim essentially is</p> <p>3 that you engaged in certain conduct and</p> <p>4 ABC took certain actions as a result of</p> <p>5 that conduct, is that generally correct?</p> <p>6 A. Define conduct.</p> <p>7 Q. We'll get into the definition</p> <p>8 of conduct, we're going to drill down a</p> <p>9 little bit more but I'm looking globally</p> <p>10 right now. Essentially your</p> <p>11 whistleblower claim is you engaged in</p> <p>12 some conduct, as a result of that</p> <p>13 conduct ABC took some action?</p> <p>14 A. I'm not understanding</p> <p>15 conduct.</p> <p>16 Q. Well, I believe you made</p> <p>17 some kind of complaint, and we'll drill</p> <p>18 down again and get into the specifics of</p> <p>19 the complaint, but just in a very</p> <p>20 general level your whistleblower act</p> <p>21 claim is that you made a complaint and</p> <p>22 then ABC took some kind of action in</p> <p>23 retaliation for that complaint, is that</p> <p>24 it?</p> <p>25 A. Yes.</p>	<p>1 A. You said you would like to</p> <p>2 say vehicle what?</p> <p>3 Q. Issue.</p> <p>4 A. Okay.</p> <p>5 Q. So you'll understand when I</p> <p>6 say vehicle issue, that's the complaint</p> <p>7 I'm referring to?</p> <p>8 A. Yes.</p> <p>9 Q. To whom, and let's start</p> <p>10 with a list, we'll, again, drill down</p> <p>11 into details, but to whom did you</p> <p>12 complain about the vehicle issue?</p> <p>13 A. At what time?</p> <p>14 Q. Any time.</p> <p>15 A. Ryan Cozart, John Taraba,</p> <p>16 Mike Bobal and OSHA agency and Agent</p> <p>17 Janell and Agent Joe Warner.</p> <p>18 Q. And you referred to agent</p> <p>19 Janell and Agent Joe Warner, are those</p> <p>20 individuals at OSHA?</p> <p>21 A. Yes.</p> <p>22 Q. Anyone else that you</p> <p>23 complained to about the vehicle issue?</p> <p>24 A. Just the in-house and agency.</p> <p>25 Q. And when we say in-house</p>
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<p>1 Q. Specifically your claim is</p> <p>2 that you made a complaint concerning the</p> <p>3 operation of powered industrial vehicles</p> <p>4 without operative horns or lights and</p> <p>5 with slipping brakes, engine stalls or</p> <p>6 cut-offs without warning and fluid</p> <p>7 leaks, is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Any other complaint that</p> <p>10 you're claiming forms the basis of your</p> <p>11 whistleblower claim in this case?</p> <p>12 A. No.</p> <p>13 Q. Is it okay if we -- since</p> <p>14 that's a lot of words, is it okay if we</p> <p>15 refer to that complaint as the vehicle</p> <p>16 issue?</p> <p>17 A. If you like.</p> <p>18 Q. But if I use the term the</p> <p>19 vehicle issue you'll understand that I'm</p> <p>20 referring to your complaint concerning</p> <p>21 the operation of powered industrial</p> <p>22 vehicles without operative horns or</p> <p>23 lights and with slipping brakes, engine</p> <p>24 stalls or cut-offs without warning and</p> <p>25 fluid leaks?</p>	<p>1 you're referring to Ryan Cozart, John</p> <p>2 Taraba and Mike Bobal, is that right?</p> <p>3 A. Yes, even though Mike Bobal</p> <p>4 is off-site.</p> <p>5 Q. You used the term in-house,</p> <p>6 any other in-house individuals that you</p> <p>7 complained to about the vehicle issue?</p> <p>8 A. Just those authorities.</p> <p>9 Q. And, again, those authorities</p> <p>10 being the individuals you identified at</p> <p>11 the American Bottling Company as well as</p> <p>12 OSHA, is that right?</p> <p>13 A. Yes.</p> <p>14 Q. With regards to Mr. Taraba,</p> <p>15 and Mr. Taraba is the distribution</p> <p>16 manager of the Youngstown facility for</p> <p>17 the American Bottling Company, is that</p> <p>18 right?</p> <p>19 A. Vending warehouse -- vending</p> <p>20 manager, warehouse manager.</p> <p>21 Q. And you're looking at a</p> <p>22 business card you just pulled out of</p> <p>23 your wallet, is that Mr. Taraba's</p> <p>24 business card?</p> <p>25 A. Yes.</p>



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<p>1 Q. And I believe you produced a 2 copy of that in discovery, correct? 3 A. Yes. 4 Q. When did you complain to Mr. 5 Taraba about the vehicle issue? 6 A. Taraba? Let's see, August 7 11th, 2010. 8 Q. Any other time you complained 9 to Mr. Taraba about the vehicle issue? 10 A. Back in 2007. 11 Q. And the 2007 complaint is 12 not part of your litigation, is that 13 right? 14 A. That's true. 15 Q. And that's a good 16 clarification, so at this point the 17 subject of this litigation or for 18 purposes of this litigation, I should 19 say, you're speaking of an August 11th, 20 2010 complaint to Mr. Taraba, correct? 21 A. That's correct. 22 Q. What form did your complaint 23 to Mr. Taraba take? And Taraba is 24 T A R A B A. 25 A. Is that a question?</p>	<p>1 of August 11th, 2010? 2 A. Not to Taraba, no. 3 Q. Did you identify any specific 4 vehicles in your written complaint to 5 Mr. Taraba of August 11th, 2010? 6 A. I believe so. 7 Q. Do you recall what those 8 vehicles were? 9 A. I know they was gas fork 10 truck towmotors. 11 Q. Anything more specific about 12 which gas truck fork towmotors -- excuse 13 me, I inverted that, gas fork truck 14 towmotors? 15 A. I think I had some numbers, 16 reference numbers. 17 Q. Anything else that you recall 18 -- strike the question, please. 19 Anything else that you said to Mr. 20 Taraba in your written complaint 21 concerning the vehicle issue of August 22 11, 2010? 23 A. Nothing else to Taraba. 24 Q. Do you know whether Mr. 25 Taraba told anyone else at the American</p>
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<p>1 Q. Yes. What form did your 2 complaint to Mr. Taraba take? 3 A. Handwritten. 4 Q. Any other form of complaint 5 to Mr. Taraba? 6 A. Not to Taraba, no. 7 Q. And when I say form of 8 complaint, I'm referring again to the 9 vehicle issue, you understood that, 10 correct? 11 A. Absolutely. 12 Q. What did you tell Mr. Taraba 13 about the vehicle issue in your written 14 complaint? 15 A. Health and safety issues 16 regarding substandard equipment, need of 17 maintenance, unsafe, no horns, no 18 lights, brake issues, maybe electronic 19 starting. I said -- I think my words 20 were something like stall and cut-off or 21 something. The electronic starting, I 22 just said that today, but I think my 23 exact words were stall, cut-off engine. 24 Q. Anything else that you said 25 to Mr. Taraba in your written complaint</p>	<p>1 Bottling Company that you complained? 2 A. You'd have to ask him. 3 Q. So the answer to my question 4 is no, you don't know whether he told 5 anyone at the American Bottling Company 6 that you had complained? 7 A. I don't have any knowledge. 8 I can assume. 9 Q. So, again, the answer to my 10 question is no? 11 A. That's right. 12 Q. Do you know whether Mr. 13 Taraba had authority to lay you off? 14 A. I assume. 15 Q. Do you have any personal 16 knowledge that Mr. Taraba had the 17 authority to lay you off? 18 A. I believe so. 19 Q. What's that personal 20 knowledge based on? 21 A. Him being a manager. 22 Q. So you're assuming that 23 because he's a manager he had authority 24 to lay you off, is that correct? 25 A. Unless corporate HR advised</p>



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<p>1 him otherwise.</p> <p>2 Q. Again, my question was, so</p> <p>3 you're assuming because Mr. Taraba was a</p> <p>4 manager he had authority to lay you off,</p> <p>5 is that correct?</p> <p>6 A. As a manager if he has</p> <p>7 authority to lay off, yes.</p> <p>8 Q. And that's your assumption,</p> <p>9 correct?</p> <p>10 A. I assume so, yes, he's --</p> <p>11 Q. Do you know whether Mr.</p> <p>12 Taraba had authority to terminate your</p> <p>13 employment?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Do you know whether Mr.</p> <p>16 Taraba made a decision to lay you off?</p> <p>17 A. Say that again, please.</p> <p>18 Q. Do you know whether Mr.</p> <p>19 Taraba, in fact, made a decision to lay</p> <p>20 you off?</p> <p>21 A. You'd have to ask him. I</p> <p>22 don't know if he made a decision or he</p> <p>23 was told.</p> <p>24 Q. So do you know whether Mr.</p> <p>25 Taraba participated in any decision to</p>	<p>1 ask you that?</p> <p>2 A. I believe it's Cozart.</p> <p>3 MR. ROSSI: Do you have a</p> <p>4 spelling for that?</p> <p>5 Q. Well, I thought it was</p> <p>6 Cozant so perhaps I read that</p> <p>7 incorrectly. I would think it's</p> <p>8 C O Z A R T, if it's Cozart, it's in</p> <p>9 your initial disclosures. Thank you.</p> <p>10 When did you complain to -- we'll use</p> <p>11 Ryan for ease, when did you complain to</p> <p>12 Ryan about the vehicle issue?</p> <p>13 A. I complained to the acting</p> <p>14 supervisor, Ryan Cozart, August 11th,</p> <p>15 2010.</p> <p>16 Q. In what form did your</p> <p>17 complaint to Ryan take?</p> <p>18 A. Verbal and written.</p> <p>19 Q. Well, let's start with the</p> <p>20 verbal complaint about the vehicle</p> <p>21 issue. What did you say to Ryan</p> <p>22 verbally about the vehicle issue?</p> <p>23 A. In conversation and</p> <p>24 discussing my dialogue, our dialogue, I</p> <p>25 stated that the problems again with the</p>
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<p>1 lay you off?</p> <p>2 A. I know he subscribed his</p> <p>3 signature to a document with layoff.</p> <p>4 Other than that, you'd have to ask him.</p> <p>5 Q. Do you know whether Mr.</p> <p>6 Taraba made a decision to terminate your</p> <p>7 employment?</p> <p>8 A. Again, you'd have to ask</p> <p>9 him. I don't know where his authority</p> <p>10 is in the company.</p> <p>11 Q. Do you know whether Mr.</p> <p>12 Taraba participated in a decision to</p> <p>13 terminate your employment?</p> <p>14 A. I believe he did.</p> <p>15 Q. What's that based on?</p> <p>16 A. Him being a manager, agent</p> <p>17 of the company.</p> <p>18 Q. So, again, you're assuming</p> <p>19 because he's a manager he participated</p> <p>20 in the decision to terminate your</p> <p>21 employment?</p> <p>22 A. You could say that.</p> <p>23 Q. You also indicated that you</p> <p>24 complained to Ryan Cozart, C O Z A --</p> <p>25 actually is it Cozart or Cozant, let me</p>	<p>1 fork trucks, I'd see the lights aren't</p> <p>2 working, I see there's oil on the floor,</p> <p>3 I see they're stalling again,</p> <p>4 substandard maintenance issues, again,</p> <p>5 consistent, before I returned to work</p> <p>6 they need corrected and be addressed.</p> <p>7 Q. You just referred to the</p> <p>8 items that you complained to Mr. -- to</p> <p>9 Ryan about as substandard maintenance</p> <p>10 issues. So is it your understanding</p> <p>11 that the items you're complaining about</p> <p>12 related to the maintenance of the</p> <p>13 vehicles?</p> <p>14 A. Say that again, please.</p> <p>15 Q. Sure. You just referred to</p> <p>16 substandard maintenance issues that you</p> <p>17 spoke to Ryan about. So is it then</p> <p>18 your understanding that these issues you</p> <p>19 were raising, the vehicle issues, were</p> <p>20 maintenance issues?</p> <p>21 A. Yeah, the discussion was</p> <p>22 safety or unsafe, to both public and</p> <p>23 employees as other vendors frequent the</p> <p>24 facility.</p> <p>25 Q. Anything else that you said</p>



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<p>1 to Ryan in your verbal complaint of 2 August 11, 2010 about the vehicle issue? 3 A. Just that dialogue and I 4 wrote him a note the same, left him a 5 note on the clipboard, that's it. 6 Q. Was anyone else present when 7 you spoke with Ryan about the vehicle 8 issue on August 11, 2010? 9 A. What do you mean present? 10 Q. Was anyone else within five 11 feet of your conversation with Ryan on 12 August 11, 2010 about the vehicle issue? 13 A. Not that I'm aware of. 14 Q. About how long would you say 15 that conversation with Ryan was on 16 August 11, 2010 about the vehicle issue? 17 A. Minutes. 18 Q. Did Ryan say anything to you 19 in response to your complaint about the 20 vehicle issue on August 11, 2010? 21 A. Just pretty much, yeah, yeah, 22 yeah. 23 Q. Do you have any specific 24 recollection of what Ryan said to you in 25 response to your complaint about the</p>	<p>1 Pending change I guess it's fair to say 2 at one time 4:00. 3 Q. Did you ever start at 9:00 4 in the morning? 5 A. No. 6 Q. And using 4:00, would you 7 then work an eight-hour shift starting 8 at 4:00? 9 A. They're supposed to be 10 eight-hour shifts Monday through Friday. 11 Q. Not counting overtime? 12 A. Not counting overtime, breaks 13 are paid. 14 Q. So generally, if we're not 15 discussing overtime, you were working 16 4:00 p.m., starting at 4:00 p.m. and 17 then working approximately an eight-hour 18 shift? 19 A. Say that again, please. 20 Q. Sure. Not discussing 21 overtime right now, generally you were 22 starting approximately 4:00 p.m. and 23 working an eight-hour shift Monday 24 through Friday? 25 A. Monday through Friday unless</p>
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<p>1 vehicle issue on August 11, 2010? 2 A. He just appeared to blow me 3 off. 4 Q. When you say he appeared to 5 blow you off, what was Ryan doing that 6 you interpreted as blowing you off? 7 A. Just sitting on a forklift, 8 I was out on the floor in the warehouse 9 and no conflict, just civil discussion 10 on the floor and that's it. 11 Q. You said sitting on a 12 forklift, was Ryan on a forklift? 13 A. Yes. 14 Q. And you approached him while 15 he was on the forklift? 16 A. Yes. Yes, he's the acting 17 supervisor when John is not there. 18 Q. You worked the second shift 19 at the American Bottling Company 20 Youngstown facility? 21 A. I assume so, they don't ever 22 refer to shifts. 23 Q. What time did your shift 24 start? 25 A. They changed several times.</p>	<p>1 they changed the schedule or you had to 2 come in early for something. 3 Q. Let's talk about the written 4 complaint that you gave to Ryan, that 5 was the same day, correct, August 11, 6 2010? 7 A. Yes. 8 Q. What did you place in 9 writing to Ryan on August 11, 2010? 10 A. Unsafe fork trucks, 11 towmotors, tell John to be aware of 12 this, maintenance, same problem 13 continued again as before, in the past, 14 ongoing. 15 Q. You mentioned same problem as 16 continued before ongoing, are you 17 referring to the complaint you made in 18 2007? 19 A. Referring to multiple times. 20 It was always some type of industrial 21 fork truck problem, maintenance, safety 22 issues. I mean, the workers sometimes 23 have to hit the battery with a steel 24 pole and hammer to start them. 25 Q. I'm referring to the vehicle</p>



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<p>1 issue though.</p> <p>2 A. Yeah, that's right.</p> <p>3 Q. So the specific complaint you</p> <p>4 were making on August 11, 2010 was</p> <p>5 something that had been ongoing for a</p> <p>6 period of time?</p> <p>7 A. Repeat, yes. Here and</p> <p>8 there.</p> <p>9 Q. Then you said a moment ago</p> <p>10 that in your written complaint to Mr.</p> <p>11 Cozart of August 11, 2010 that you</p> <p>12 mentioned that he should let or tell</p> <p>13 John to be aware of the problem, is</p> <p>14 that right?</p> <p>15 A. Yeah, just a reminder, the</p> <p>16 note was definitely a reminder. Because</p> <p>17 when John is not there Ryan is the</p> <p>18 acting supervisor in charge, open,</p> <p>19 close, lock, the higher rate of pay,</p> <p>20 he's the authority in place of John.</p> <p>21 Q. You testified earlier that</p> <p>22 you issued a written complaint to Mr.</p> <p>23 Taraba on that same date of August 11,</p> <p>24 2010, approximately when in relation to</p> <p>25 the written complaint you made to Mr.</p>	<p>1 clipboard, is that right?</p> <p>2 A. There's a clipboard, yes.</p> <p>3 Q. So you placed the written</p> <p>4 complaint to Mr. Cozart of August 11,</p> <p>5 2010 on the clipboard that Ryan leaves</p> <p>6 notes for for John Taraba, is that</p> <p>7 right?</p> <p>8 A. That's right.</p> <p>9 Q. And in addition to that you</p> <p>10 also completed a written complaint to</p> <p>11 Mr. Taraba that you placed where?</p> <p>12 A. On his desk.</p> <p>13 Q. Mr. Taraba's desk?</p> <p>14 A. Yes. That's the standard</p> <p>15 pattern and practice through all my</p> <p>16 experience in 2007.</p> <p>17 MR. ROSSI: Wait for a question.</p> <p>18 Q. I'm not sure, I'm not</p> <p>19 understanding, you're using a term</p> <p>20 called pattern and practice, I'm not</p> <p>21 understanding that term, what do you</p> <p>22 mean by that?</p> <p>23 A. That's the usual course of</p> <p>24 business, leave notes for John.</p> <p>25 Q. That's the usual course of</p>
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<p>1 Cozart of that same date did you make</p> <p>2 the complaint to Mr. Taraba?</p> <p>3 A. About the same time.</p> <p>4 Q. Was it simultaneous, were you</p> <p>5 writing two letters at the same time?</p> <p>6 A. Yeah.</p> <p>7 Q. One to Ryan and one to John?</p> <p>8 A. Yes, I sat down and grabbed</p> <p>9 a paper and pen and started writing.</p> <p>10 Q. Well, if you were leaving</p> <p>11 Mr. Taraba a note why did you also</p> <p>12 leave one for Mr. Cozart?</p> <p>13 A. To remind him, plus he's the</p> <p>14 acting supervisor.</p> <p>15 Q. To remind him of what?</p> <p>16 A. The power and practice.</p> <p>17 What it is is when Ryan is in charge</p> <p>18 there's a clipboard that he leaves his</p> <p>19 notes for John and in good faith and a</p> <p>20 courtesy, double courtesy in the</p> <p>21 interest of safety I just provided him a</p> <p>22 reminder.</p> <p>23 Q. And I think you actually</p> <p>24 testified earlier that you placed your</p> <p>25 written complaint to Mr. Cozart on that</p>	<p>1 your business to leave notes for John?</p> <p>2 A. John's policy.</p> <p>3 Q. And in your experience, times</p> <p>4 you've left notes for Mr. Taraba on his</p> <p>5 desk, he's responded to those notes to</p> <p>6 you?</p> <p>7 A. Sometimes.</p> <p>8 Q. Can you think of a specific</p> <p>9 occasion when he didn't respond to the</p> <p>10 note that you left for him on his desk?</p> <p>11 A. Vacation issues, wage issues,</p> <p>12 overtime issues. He's hit or miss, got</p> <p>13 to remind him a lot.</p> <p>14 Q. You testified about some</p> <p>15 categories. I'm looking for a specific</p> <p>16 occasion that you recall leaving Mr.</p> <p>17 Taraba a note and that he did not</p> <p>18 respond to you?</p> <p>19 A. Well, a specific occasion</p> <p>20 would be maybe in 2007 misclassifying me</p> <p>21 as seasonal, wrong pay rate, wrong</p> <p>22 status.</p> <p>23 Q. Are those different items or</p> <p>24 are they all part of the classification</p> <p>25 seasonal?</p>



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<p>1 A. You'd have to ask him. I</p> <p>2 was hired as a warehouse employee. Just</p> <p>3 the wrong pay rate was remedied upon</p> <p>4 grievance in 2008, 2007, the end of 2007</p> <p>5 going into January of 2008. Chris</p> <p>6 Colello, Teamsters 377 remedied.</p> <p>7 Q. I'm sorry, he remedied what?</p> <p>8 A. Paying me my wages.</p> <p>9 Q. Anything else that you placed</p> <p>10 in your written complaint of August 11,</p> <p>11 2010 to Mr. Cozart?</p> <p>12 A. Say that again, please.</p> <p>13 Q. Anything else that you placed</p> <p>14 in your written complaint of August 11,</p> <p>15 2010 to Mr. Cozart?</p> <p>16 A. I think I covered it.</p> <p>17 Q. You referred to Mr. Cozart a</p> <p>18 number of times as an acting supervisor</p> <p>19 today, do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. You didn't actually consider</p> <p>22 Mr. Cozart to be a supervisor though,</p> <p>23 correct?</p> <p>24 A. Define supervisor.</p> <p>25 Q. In your terms you didn't</p>	<p>1 "working supervisor" (Ryan Cozart) on</p> <p>2 August 5th, 2008, but this CBA defined</p> <p>3 "supervisor" got out of line regarding</p> <p>4 Section 2 of Article 17 conduct," and</p> <p>5 then it goes on. Did I read that</p> <p>6 correctly?</p> <p>7 A. Appears so.</p> <p>8 Q. You then in the next</p> <p>9 paragraph, I guess it's fair to say</p> <p>10 third paragraph that starts under</p> <p>11 Section 1 of Article 1, CBA, do you see</p> <p>12 that?</p> <p>13 A. Where are you at?</p> <p>14 Q. You have a line that says</p> <p>15 "despite the above."</p> <p>16 A. Oh, yes, yes.</p> <p>17 Q. And then there's a paragraph</p> <p>18 underneath it?</p> <p>19 A. Yes.</p> <p>20 Q. Okay, great. Is it fair to</p> <p>21 say that you're disputing that Mr.</p> <p>22 Cozart is a supervisor for purposes of</p> <p>23 the collecting bargaining agreement in</p> <p>24 this correspondence?</p> <p>25 A. I never got an answer to</p>
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<p>1 consider Mr. Cozart to actually be a</p> <p>2 supervisor for the American Bottling</p> <p>3 Company, is that right?</p> <p>4 A. He's a supervising authority</p> <p>5 at all times at nights.</p> <p>6 - - - - -</p> <p>7 (Thereupon, Deposition</p> <p>8 Exhibit-7 was marked for</p> <p>9 purposes of identification.)</p> <p>10 - - - - -</p> <p>11 Q. Handing you what's been</p> <p>12 marked Deposition Exhibit 7, this</p> <p>13 appears to be a handwritten note dated</p> <p>14 August 6, 2008 addressed to John G.</p> <p>15 Lesicko, L E S I C K O --</p> <p>16 A. Yes.</p> <p>17 Q. -- Teamsters Local 377 from</p> <p>18 Robert Potts. Is this your handwriting,</p> <p>19 sir?</p> <p>20 A. Yes.</p> <p>21 Q. In this correspondence to the</p> <p>22 union you say, "In short, I brought a</p> <p>23 concern upon my ergonomic issue to the</p> <p>24 attention of a supervisory member of</p> <p>25 management or who some others call a</p>	<p>1 this.</p> <p>2 Q. I'm not asking about whether</p> <p>3 you got an answer. I'm asking, is it</p> <p>4 fair to say in this paragraph that</p> <p>5 you're disputing that Mr. Cozart is a</p> <p>6 supervisor as defined in the term of the</p> <p>7 collective bargaining agreement in</p> <p>8 existence at that time?</p> <p>9 A. No. It says he's a</p> <p>10 supervisor. It says, "I brought the</p> <p>11 concern upon my ergonomic issue to the</p> <p>12 attention of a supervisory member of</p> <p>13 management."</p> <p>14 Q. Again, looking at the next</p> <p>15 paragraph of the letter starting, "Under</p> <p>16 Section 1 of Article 1, CBA,</p> <p>17 "supervisory" is an excluded position</p> <p>18 for Teamsters membership of Local 377</p> <p>19 and any supervisory employee as a member</p> <p>20 of the union conflicts with Article II,</p> <p>21 Sections 1-2 of the IBT International</p> <p>22 Brotherhood of Teamsters Constitution</p> <p>23 adopted by the 27th International</p> <p>24 Convention June 26 through 30, 2006."</p> <p>25 Did I read that correctly?</p>



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<p>1 A. Yes.</p> <p>2 Q. So, in other words, you are</p> <p>3 stating to your union representative</p> <p>4 that as the term supervisor is defined</p> <p>5 in the collective bargaining agreement</p> <p>6 those individuals are not members of the</p> <p>7 Teamsters, right?</p> <p>8 A. I believe there's a conflict,</p> <p>9 yes.</p> <p>10 Q. Do you know, was Mr. Cozart</p> <p>11 a Teamster, do you know?</p> <p>12 A. I only assume. We're all</p> <p>13 Teamsters, supposed to be. I don't know</p> <p>14 any private information.</p> <p>15 Q. Do you know whether Ryan</p> <p>16 passed your complaint along to any</p> <p>17 member of ABC Youngstown management?</p> <p>18 A. You'd have to ask him, I</p> <p>19 don't know.</p> <p>20 Q. Do you know whether, assuming</p> <p>21 Mr. Cozart did pass your complaint</p> <p>22 along, whether he identified you as the</p> <p>23 individual complaining?</p> <p>24 A. I'm sure he has because I</p> <p>25 was there and it was me talking to him</p>	<p>1 had a disagreement with him before and</p> <p>2 he sent me home before, despite of just</p> <p>3 regular work schedules, you go, he goes,</p> <p>4 that person goes. He's the boss.</p> <p>5 Q. I'm sorry, go ahead.</p> <p>6 A. He's the boss.</p> <p>7 Q. And what date did he send</p> <p>8 you home after you had an interaction</p> <p>9 with him?</p> <p>10 A. I can't recall.</p> <p>11 Q. Did you lose any pay the day</p> <p>12 that he sent you home?</p> <p>13 A. Yeah, if he sent me home I</p> <p>14 didn't get a complete eight-hour day,</p> <p>15 yes.</p> <p>16 Q. Do you recall that being the</p> <p>17 case?</p> <p>18 A. Of course, I didn't get paid</p> <p>19 for it.</p> <p>20 Q. What time was left on your</p> <p>21 eight-hour shift when Mr. Cozart sent</p> <p>22 you home on the date you can't recall?</p> <p>23 A. I can't recall.</p> <p>24 Q. Do you know whether Mr.</p> <p>25 Cozart placed any information in your</p>
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<p>1 in dialogue. So I would say yes, I</p> <p>2 would say he'd have to say me.</p> <p>3 Q. I understand that you believe</p> <p>4 that it should have occurred. I'm</p> <p>5 asking, do you have any personal</p> <p>6 knowledge of whether, assuming Mr.</p> <p>7 Cozart did pass your complaint along to</p> <p>8 ABC Youngstown management, he identified</p> <p>9 you as the person complaining?</p> <p>10 A. Again, I can't answer for</p> <p>11 him, you have to talk to him.</p> <p>12 Q. So you don't know whether he</p> <p>13 did or not?</p> <p>14 A. I don't know what he did.</p> <p>15 Q. Do you know whether Mr.</p> <p>16 Cozart had authority to discipline you?</p> <p>17 A. I assume he did.</p> <p>18 Q. But you don't know?</p> <p>19 A. He sent me home in the past.</p> <p>20 Q. What are you referring to?</p> <p>21 A. In relation to work, eight-</p> <p>22 hour days. Two separate issues, he</p> <p>23 always let people go home when he felt</p> <p>24 certain work was done or if his</p> <p>25 authority chose to send someone home. I</p>	<p>1 personnel file relating to the date that</p> <p>2 you can't recall that Mr. Cozart sent</p> <p>3 you home?</p> <p>4 A. You'd have to ask him. I</p> <p>5 don't know what he puts in, didn't put</p> <p>6 it or if he can or can't, I don't know.</p> <p>7 Q. Do you know whether Mr.</p> <p>8 Cozart had authority to lay you off?</p> <p>9 A. Possible.</p> <p>10 Q. Do you know whether Mr.</p> <p>11 Cozart had authority to lay you off?</p> <p>12 A. I don't know, you'd have to</p> <p>13 ask him.</p> <p>14 Q. Do you know whether Mr.</p> <p>15 Cozart had authority to terminate your</p> <p>16 employment?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Do you know whether Mr.</p> <p>19 Cozart made a decision at any time to</p> <p>20 lay you off?</p> <p>21 A. You have to ask him, I'm not</p> <p>22 sure.</p> <p>23 Q. Do you know --</p> <p>24 A. Don't know. Sorry.</p> <p>25 Q. Do you know whether Mr.</p>



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<p>1 Cozart participated in any decision to 2 lay you off? 3 A. I don't know. It's 4 possible. 5 Q. But you don't know? 6 A. Don't know. 7 Q. Do you know whether Mr. 8 Cozart made a decision to terminate your 9 employment? 10 A. You have to ask him. 11 Q. You don't know? 12 A. I don't know. 13 Q. Do you know whether Mr. 14 Cozart participated in the decision to 15 terminate your employment? 16 A. Don't know, you have to ask 17 him. 18 Q. You also testified that you 19 raised the vehicle issue to Mike Bobal, 20 is that right? 21 A. Yes. 22 Q. And I think you said that 23 Mr. Bobal, he's in the human resources 24 department for the American Bottling 25 Company but not located at the</p>	<p>1 Q. So, and I know this sounds 2 basic, but essentially you complained to 3 Mr. Cozart on August 11, 2010 both 4 verbally and then you left a note for 5 him as well, is that right? 6 A. That's correct. 7 Q. Then you also left a note 8 for Mr. Taraba on August 11, 2010, is 9 that right? 10 A. That's right. 11 Q. And then you sent a note to 12 Mr. Bobal on August 12, 2010 setting 13 forth the vehicle issue, is that right? 14 A. Yes. 15 Q. Did you mail the handwritten 16 report to Mr. Bobal? 17 A. Yeah, mailed him a letter. 18 Q. What time of day did you 19 mail the letter, do you recall? 20 A. I don't know. Late, late 21 day, after 4. 22 Q. Did you sign the handwritten 23 note to Mr. Bobal? 24 A. I always just like this, 25 referring to the document, Exhibit 7 you</p>
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<p>1 Youngstown facility, is that right? 2 A. Yes, he's not local, 3 off-site. 4 Q. And when did you complain to 5 Mr. Bobal about the vehicle issue? 6 A. August 12th, 2010. 7 Q. What form did your complaint 8 to Mr. Bobal take? B O B A L. 9 A. Say that again, please. 10 Q. What form did your complaint 11 to Mr. Bobal take? 12 A. Handwritten. 13 Q. Any other form your complaint 14 to Mr. Bobal took? 15 A. No. 16 Q. So talking about your written 17 complaint to Mr. Bobal about the vehicle 18 issue, what did you say in your 19 handwritten complaint of August 12, 2010 20 to Mr. Bobal? 21 A. Pretty much the same as the 22 others. Unsafe fork trucks, horns not 23 working, lights not working, stalls, 24 cut-off, oil leaking. Same. Repeat. 25 Duplicate.</p>	<p>1 showed me, handwriting. 2 Q. I'm sorry, you always what? 3 A. Always -- when I handwrite 4 this is the same form or scratch paper 5 or whatever, I don't subscribe a 6 signature upon it. I just -- when I 7 handwrite, that's the way it is. To, 8 from. 9 Q. So you put from Robert 10 Potts -- 11 A. Yes. 12 Q. -- on the correspondence? 13 A. Yes. 14 Q. Do you know whether Mr. 15 Bobal passed along your August 12, 2010 16 correspondence to anyone at ABC 17 management? 18 A. You have to ask him, I don't 19 know. 20 Q. Do you know, assuming Mr. 21 Bobal did pass along your August 12, 22 2010 handwritten correspondence to 23 someone at ABC management, that he 24 identified you as the person providing 25 that information?</p>



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<p>1 A. Can you repeat that, please?</p> <p>2 Q. Assuming Mr. Bobal informed</p> <p>3 somebody at ABC management that he</p> <p>4 received a complaint about the</p> <p>5 Youngstown vehicle issue, do you know</p> <p>6 whether he identified you as the person</p> <p>7 who raised the issue?</p> <p>8 A. You're saying assuming, I</p> <p>9 guess I don't know, you have to ask him</p> <p>10 what he did.</p> <p>11 Q. Do you know whether Mr.</p> <p>12 Bobal had authority to discipline you?</p> <p>13 A. I don't know. I assume he</p> <p>14 does, he's a manager.</p> <p>15 Q. But you don't know?</p> <p>16 A. I don't know who's the</p> <p>17 authority locally, regionally,</p> <p>18 headquarters, Texas, Cleveland, I don't</p> <p>19 know.</p> <p>20 Q. Do you know whether Mr.</p> <p>21 Bobal had authority to lay you off?</p> <p>22 A. It's possible. It's fair</p> <p>23 enough to say he does.</p> <p>24 Q. What I'm asking is, do you</p> <p>25 have any personal knowledge that Mr.</p>	<p>1 Q. What's possible, that you're</p> <p>2 assuming it or that he had authority?</p> <p>3 A. He's a manager, member of</p> <p>4 the management team, you could say he</p> <p>5 has authority to make a decision,</p> <p>6 company decision, layoff.</p> <p>7 Q. And I'm asking whether you</p> <p>8 know that to be a factually accurate</p> <p>9 statement that he does have authority to</p> <p>10 lay you off?</p> <p>11 A. You'd have to ask him.</p> <p>12 Q. You don't know?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you know whether Mr.</p> <p>15 Bobal made any decision to lay you off?</p> <p>16 A. I don't know if he's the</p> <p>17 solo, I don't know if he's directed, you</p> <p>18 have to ask him, I don't know.</p> <p>19 Q. Do you know whether he</p> <p>20 participated in any way concerning the</p> <p>21 decision to lay you off?</p> <p>22 A. Yeah, he participated.</p> <p>23 Q. What's that based on?</p> <p>24 A. A member of the management,</p> <p>25 member of the company.</p>
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<p>1 Bobal had authority to lay you off?</p> <p>2 A. Personal knowledge, I don't</p> <p>3 know if he did or not.</p> <p>4 Q. And, again, all the questions</p> <p>5 I'm asking today, I'm looking for your</p> <p>6 personal knowledge, okay?</p> <p>7 A. Repeat the question, please.</p> <p>8 Q. All the questions I'm asking</p> <p>9 you today, I'm looking for your personal</p> <p>10 knowledge, okay?</p> <p>11 A. Okay. The other question</p> <p>12 before you said personal.</p> <p>13 Q. Sure. Do you know whether</p> <p>14 Mr. Bobal had authority to lay you off?</p> <p>15 A. I believe so. I don't know.</p> <p>16 Q. When you say I believe so,</p> <p>17 you're making an assumption that he had</p> <p>18 authority, correct?</p> <p>19 A. He's a manager. I can in</p> <p>20 good faith say yes, he has authority.</p> <p>21 Q. And, again, your basis for</p> <p>22 your statement is that you assume</p> <p>23 because he's a manager he has authority</p> <p>24 to lay you off, is that correct?</p> <p>25 A. It's possible.</p>	<p>1 Q. So, again, you're assuming</p> <p>2 because he's a member of management,</p> <p>3 member of company, he participated in a</p> <p>4 decision to lay you off?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know whether Mr.</p> <p>7 Bobal made a decision to terminate your</p> <p>8 employment?</p> <p>9 A. I don't know if he's the</p> <p>10 authority to terminate or someone tells</p> <p>11 him or directs him. It's a corporation.</p> <p>12 I don't know who the board of directors</p> <p>13 or anybody is. I don't know who's the</p> <p>14 authority.</p> <p>15 Q. So the answer to my question</p> <p>16 is no, you don't know whether Mr. Bobal</p> <p>17 made the decision to terminate your</p> <p>18 employment?</p> <p>19 A. No, I don't know who is the</p> <p>20 actual individual agent, company agent.</p> <p>21 Q. So similarly you don't know</p> <p>22 whether Mr. Bobal participated in any</p> <p>23 decision to terminate your employment?</p> <p>24 A. Sure, he participated.</p> <p>25 Q. What's that based on?</p>



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<p>1 A. Member of the management.</p> <p>2 Q. So, again, it's an assumption</p> <p>3 because he's a member of management he</p> <p>4 participated in the decision to</p> <p>5 terminate your employment?</p> <p>6 A. Of course.</p> <p>7 Q. Of course what, that you're</p> <p>8 making an assumption?</p> <p>9 A. That he's a member of</p> <p>10 management with authority.</p> <p>11 Q. And that's really what I'm</p> <p>12 trying to get at, okay. My question</p> <p>13 is, do you know whether in fact Mr.</p> <p>14 Bobal, in fact, participated in a</p> <p>15 decision to terminate your employment?</p> <p>16 A. Absolutely he participated.</p> <p>17 Q. And how do you know that,</p> <p>18 what fact are you basing that on?</p> <p>19 A. He's employed as an HR</p> <p>20 assistant.</p> <p>21 Q. So again --</p> <p>22 A. Or associate.</p> <p>23 Q. I apologize. Were you</p> <p>24 finished?</p> <p>25 A. Go ahead.</p>	<p>1 document that we received from your</p> <p>2 counsel as part of your production in</p> <p>3 this case. It's a multipage document</p> <p>4 with handwritten notes on it and I'll</p> <p>5 tell you that the front page was an</p> <p>6 envelope and the subsequent pages were</p> <p>7 inside the envelope. My question for</p> <p>8 you is, do you recall providing this</p> <p>9 information to the American Bottling</p> <p>10 Company in discovery?</p> <p>11 A. Yes.</p> <p>12 Q. There appears to be some</p> <p>13 highlights on the document, we had these</p> <p>14 photocopied in color. My understanding</p> <p>15 is the highlighted portions were things</p> <p>16 that you yourself highlighted, is that</p> <p>17 correct?</p> <p>18 A. Sure.</p> <p>19 Q. On the first page of the</p> <p>20 document you've entitled it -- well, it</p> <p>21 appears to say in your handwriting,</p> <p>22 "Miscellaneous notes/reports, some</p> <p>23 examples of notes/reports. This is how</p> <p>24 all the workers communicate with</p> <p>25 supervisor John Taraba." And then you</p>
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<p>1 Q. So, again, you're assuming</p> <p>2 because he's in human resources he</p> <p>3 participated in the decision to</p> <p>4 terminate your employment?</p> <p>5 A. He's a member of the</p> <p>6 American Bottling Company, he's got</p> <p>7 authority.</p> <p>8 Q. Mr. Potts, we can sit here</p> <p>9 all day and go back and forth but my</p> <p>10 question is really simple. I'm just</p> <p>11 asking, do you have personal knowledge,</p> <p>12 not an assumption because he's in</p> <p>13 management or an assumption because he's</p> <p>14 in HR, but whether you, in fact, have</p> <p>15 any personal knowledge that Mr. Bobal</p> <p>16 participated in a decision to terminate</p> <p>17 your employment?</p> <p>18 A. Personally, no.</p> <p>19 - - - - -</p> <p>20 (Thereupon, Deposition</p> <p>21 Exhibit-8 was marked for</p> <p>22 purposes of identification.)</p> <p>23 - - - - -</p> <p>24 Q. Handing you what's been</p> <p>25 marked Deposition Exhibit 8, this is a</p>	<p>1 go on. Is that your handwriting?</p> <p>2 A. Yes.</p> <p>3 Q. And then flipping through the</p> <p>4 document it looks like there are a</p> <p>5 couple of items in here, one appears to</p> <p>6 relate to floating holidays you were</p> <p>7 requesting and one appears to relate to</p> <p>8 payment of sick days, is that right?</p> <p>9 A. Notes on a copy of a payroll</p> <p>10 check, sick days, undated correspondence</p> <p>11 from John, yeah, yeah, sure.</p> <p>12 Q. And the handwriting on that</p> <p>13 second page looks like a note from you</p> <p>14 to Mr. Taraba, October 8, 2008. At the</p> <p>15 bottom portion of that page do you</p> <p>16 recognize that handwriting to be John</p> <p>17 Taraba's?</p> <p>18 A. It appears to be.</p> <p>19 Q. Second page -- excuse me,</p> <p>20 third page of the exhibit, Deposition</p> <p>21 Exhibit 8, do you recognize that</p> <p>22 handwriting to be Mr. Taraba's? Third</p> <p>23 page, sir.</p> <p>24 A. This one?</p> <p>25 Q. Yes. Correct. I didn't</p>



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<p>1 realize you had taken it apart, yes. 2 A. Appears to be. 3 - - - - - 4 (Thereupon, Deposition 5 Exhibit-9 was marked for 6 purposes of identification.) 7 - - - - - 8 Q. Handing you what's been 9 marked Deposition Exhibit 9, do you know 10 what this document is? 11 A. Yes, it's a copy of two 12 receipts. 13 Q. Do you understand these 14 receipts to relate to -- well, strike 15 the question, please. My understanding 16 of this document is that this is -- 17 these are receipts from the post office 18 in Warren, Ohio concerning a certified 19 mailing from you to Mr. Bobal in Maple 20 Heights on August 12, 2010, is that 21 right? 22 A. It's a certificate of 23 mailing. 24 Q. And my question is, my 25 understanding, you can tell me if I'm</p>	<p>1 Exhibit 9 are the receipts for the 2 written correspondence you sent to Mr. 3 Bobal on August 12, 2010 concerning the 4 vehicle issue? 5 A. Appears to be, yes. 6 Q. Well, I'm not asking you 7 what it appears to be, I'm asking you 8 is that a fact? 9 A. Yes. 10 Q. Do you recall sending Mr. 11 Bobal any other communication around 12 that time? 13 A. Yes, I sent him other stuff, 14 of course. 15 Q. What other stuff are you 16 referring to? 17 A. What do you mean? 18 Q. You said you sent him other 19 stuff -- 20 A. Yeah. 21 Q. -- around that time, what 22 other stuff are you referring to? 23 A. I sent him a computer typed 24 note or letter, correspondence, 25 regarding payroll.</p>
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<p>1 right or wrong, is that these receipts 2 relate to a certified mailing that you 3 sent to Mr. Bobal on or about August 4 12, 2010? 5 A. Certificate of mailing, yes. 6 Q. What does this document 7 relate to, what do these receipts relate 8 to? 9 A. Just a receipt of my 10 mailing. 11 Q. What mailing? 12 A. Notes to Mike Bobal, the 13 company. 14 Q. What did those notes concern? 15 A. Fork trucks, defect, safety 16 issues, same thing, horns not working, 17 brakes slipping, stall off. 18 Q. So are you asserting that 19 this document, Deposition Exhibit 9, is 20 the receipt for the letter that you sent 21 to Mr. Bobal on August 12, 2010? 22 A. Yeah, I sent Mr. Bobal a 23 letter August 12, 2010, yes. 24 Q. And what I'm asking you is, 25 is it your testimony that Deposition</p>	<p>1 Q. I'm sorry, anything else that 2 you were referring to? 3 A. That should cover it. 4 - - - - - 5 (Thereupon, Deposition 6 Exhibit-10 was marked for 7 purposes of identification.) 8 - - - - - 9 Q. Showing you Deposition 10 Exhibit 10, is this the correspondence 11 that you're referring to? This is a 12 document bearing, for the record, Bates 13 label ABC 5 through ABC 6. Two-page 14 document, cover sheet appears to be a 15 letter from you dated August 11th, 2010. 16 Second page appears to be an enclosure 17 to that letter dated July 16th, 2010, 18 addressed to you regarding an 19 outstanding payroll check. And, again, 20 for clarification my question is, is 21 this the correspondence you were just 22 referring to concerning a payroll issue? 23 A. It appears to be. 24 Q. You did not send this 25 document certified mail to Mr. Bobal --</p>



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<p>1 excuse me, to Mr. Taraba?</p> <p>2 A. To Taraba? No, I left this</p> <p>3 in the warehouse.</p> <p>4 Q. And then if you look at the</p> <p>5 cc on the bottom, did you -- let me ask</p> <p>6 you this first: You drafted this</p> <p>7 document, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And the cc listed William C.</p> <p>10 Stimmel, S T I M M E L, and Michael L.</p> <p>11 Bobal, correct?</p> <p>12 A. Yes.</p> <p>13 Q. By this were you indicating</p> <p>14 that you had sent carbon copies to each</p> <p>15 of these gentlemen?</p> <p>16 A. I put the copies with the</p> <p>17 originals for them.</p> <p>18 Q. And you were indicating that</p> <p>19 you were providing copies of Deposition</p> <p>20 Exhibit 10 to Mr. Stimmel and to Mr.</p> <p>21 Bobal, is that right?</p> <p>22 A. In-house, yes.</p> <p>23 Q. And how did you send Mr.</p> <p>24 Bobal his copy?</p> <p>25 A. I believe I mailed it.</p>	<p>1 Bottling Company?</p> <p>2 A. I don't have any.</p> <p>3 Q. So you chose not to retain</p> <p>4 copies of the August 11th, 2010 and</p> <p>5 August 12th, 2010 correspondence to Mr.</p> <p>6 Cozart, Mr. Taraba and Mr. Bobal, is</p> <p>7 that right?</p> <p>8 A. They're handwritten directly</p> <p>9 to the company, they have them, they</p> <p>10 should have them.</p> <p>11 Q. And you didn't retain any</p> <p>12 copies for yourself?</p> <p>13 A. Handwritten, no. I don't</p> <p>14 copy everything.</p> <p>15 MR. ROSSI: Wait for a question.</p> <p>16 THE WITNESS: Sorry.</p> <p>17 Q. If you can pull out</p> <p>18 Deposition Exhibit 7, it's the</p> <p>19 handwritten note dated August 6, 2008.</p> <p>20 A. Yes.</p> <p>21 Q. It's a document you produced</p> <p>22 to us and that's handwritten in your</p> <p>23 handwriting, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And you retained a copy of</p>
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<p>1 Q. Did you send Mr. Bobal's</p> <p>2 copy certified mail?</p> <p>3 A. No, regular mail, ordinary</p> <p>4 mail.</p> <p>5 Q. Why did you not send Mr.</p> <p>6 Bobal's copy certified mail?</p> <p>7 A. Because this is a payroll</p> <p>8 issue and if he didn't deal with it the</p> <p>9 union can deal with it.</p> <p>10 Q. Is it possible that</p> <p>11 Deposition Exhibit 10 is actually the</p> <p>12 letter for which Deposition Exhibit 9 is</p> <p>13 a receipt?</p> <p>14 A. Nope.</p> <p>15 Q. Because you produced no copy</p> <p>16 of any written document whatsoever</p> <p>17 setting forth the vehicle issue?</p> <p>18 A. Repeat that, please.</p> <p>19 Q. You've produced no document</p> <p>20 concerning any correspondence, whether</p> <p>21 it be to Mr. Cozart, Mr. Taraba or Mr.</p> <p>22 Bobal about the vehicle issue?</p> <p>23 A. What do you mean produce?</p> <p>24 Q. You didn't provide it to us</p> <p>25 during discovery, us being the American</p>	<p>1 that, correct?</p> <p>2 A. It looked that way because</p> <p>3 it was a fax transmission before it,</p> <p>4 yes.</p> <p>5 Q. So what is your practice</p> <p>6 when you submit handwritten documents or</p> <p>7 correspondence to the company, do you</p> <p>8 retain copies or not?</p> <p>9 A. Sometimes.</p> <p>10 Q. And how do you determine</p> <p>11 whether you're going to retain a copy of</p> <p>12 a handwritten document you've submitted</p> <p>13 to the company?</p> <p>14 A. If I'm going to fax it or if</p> <p>15 I type it on the computer.</p> <p>16 Q. I asked about handwritten</p> <p>17 document.</p> <p>18 A. Oh, I'm sorry. I apologize.</p> <p>19 It just depends on the circumstance. If</p> <p>20 I'm in-house, if it's there, during the</p> <p>21 day if it's a note, you write it on the</p> <p>22 floor, changes all the time. And when</p> <p>23 I fax I always photocopy so the fax</p> <p>24 machine can take it easy.</p> <p>25 Q. Because you want to make</p>



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<p>1 sure that you have accurate records of</p> <p>2 correspondence that you submitted?</p> <p>3 A. No. When I fax the fax</p> <p>4 machine doesn't take notebook paper and</p> <p>5 other stuff and plus it looks different</p> <p>6 when it's a different color so when I</p> <p>7 send a fax I always copy, photocopy.</p> <p>8 Q. Oh, you're saying that you</p> <p>9 photocopy the handwritten note so that</p> <p>10 the fax machine can transmit the</p> <p>11 document more easily?</p> <p>12 A. When my faxes, yes, if it's</p> <p>13 on regular paper.</p> <p>14 Q. On August 12th, 2010, before</p> <p>15 you sent the correspondence to Mr. Bobal</p> <p>16 did you call Mr. Taraba and ask what</p> <p>17 the status was of your written note to</p> <p>18 him of August 11, 2010?</p> <p>19 A. No.</p> <p>20 Q. Before you sent the August</p> <p>21 12th, 2010 correspondence to Mr. Bobal</p> <p>22 did you call Mr. Cozart and ask him</p> <p>23 what the status was of the verbal</p> <p>24 conversation about the vehicle issue and</p> <p>25 the written correspondence that you left</p>	<p>1 layoff since September 21st of 2009,</p> <p>2 correct?</p> <p>3 A. Layoff, yes.</p> <p>4 Q. How is it that you happened</p> <p>5 to be at the Youngstown facility on</p> <p>6 August 11, 2010 approaching Mr. Cozart</p> <p>7 was while he was sitting on a forklift?</p> <p>8 A. Well, because John wasn't</p> <p>9 there.</p> <p>10 Q. How were you -- why were you</p> <p>11 at the Youngstown facility on August 11,</p> <p>12 2010 since you had been on layoff since</p> <p>13 September 21st of 2009?</p> <p>14 A. Well, several reasons. I</p> <p>15 wanted to look at the board and see if</p> <p>16 they had my union dues receipts, they</p> <p>17 usually post them on the board or leave</p> <p>18 them there. Drop a note off for John I</p> <p>19 pretyped for payroll issues and I</p> <p>20 observed the fork issues again.</p> <p>21 Q. So I want to make sure I</p> <p>22 understand. You went to the Youngstown</p> <p>23 facility on August 11th, 2010 at</p> <p>24 approximately what time?</p> <p>25 A. I can't recall.</p>
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<p>1 for Mr. Cozart?</p> <p>2 A. No, I don't even know his</p> <p>3 phone number.</p> <p>4 Q. So you didn't call, fair to</p> <p>5 say you didn't call anyone at the</p> <p>6 Youngstown facility prior to sending</p> <p>7 your letter to Mr. Bobal on August 12,</p> <p>8 2010?</p> <p>9 A. They have my phone number,</p> <p>10 no.</p> <p>11 Q. You say they have my phone</p> <p>12 number and that's because you were not</p> <p>13 actively working at the Youngstown</p> <p>14 facility in August of 2010, correct?</p> <p>15 A. I was active.</p> <p>16 Q. You were active in seniority</p> <p>17 but you were not working a day-to-day</p> <p>18 basis, correct?</p> <p>19 A. I didn't clock in and clock</p> <p>20 out, no.</p> <p>21 Q. Were you performing work as</p> <p>22 a warehouse person and you just weren't</p> <p>23 clocking in and out in August of 2010?</p> <p>24 A. No.</p> <p>25 Q. No, in fact, you had been on</p>	<p>1 Q. Obviously it was after Mr.</p> <p>2 Taraba had left for the day?</p> <p>3 A. He wasn't there, no.</p> <p>4 Q. And you were not currently</p> <p>5 working somewhere else on August 11,</p> <p>6 2010, correct?</p> <p>7 A. Correct.</p> <p>8 Q. So you went to the</p> <p>9 Youngstown facility on August 11, 2010</p> <p>10 to look at the board to see if a union</p> <p>11 dues receipt had been posted for you?</p> <p>12 A. That's one of the reasons,</p> <p>13 yes.</p> <p>14 Q. And then the other reason</p> <p>15 you said was to deliver a pretyped note</p> <p>16 for Mr. Taraba about a payroll issue,</p> <p>17 correct?</p> <p>18 A. That's another reason, yes.</p> <p>19 Q. Any other reasons other than</p> <p>20 looking for the union dues receipt and</p> <p>21 to deliver the pretyped note for Mr.</p> <p>22 Taraba on the payroll issue that you</p> <p>23 were at the Youngstown facility on</p> <p>24 August 11, 2010?</p> <p>25 A. Please repeat that.</p>



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<p>1 Q. Any other reasons that you 2 went to the Youngstown facility on 3 August 11, 2010 other than to look at 4 the board to see if your union dues 5 receipt was posted and to deliver a 6 pretyped note to Mr. Taraba about 7 payroll issues? 8 A. Not really. 9 Q. And the pretyped note to Mr. 10 Taraba about payroll issues, that's 11 Deposition Exhibit 10, is that right? 12 A. Say that again, please. 13 Q. The pretyped note that you 14 were delivering to Mr. Taraba on August 15 11, 2010, that is Deposition Exhibit 10, 16 is that right? 17 A. It's a copy, yes. 18 Q. That's the letter that you 19 were going to Youngstown to deliver to 20 Mr. Taraba on August 11, 2010? 21 A. I don't see my signature 22 subscribed to it but it's the same 23 writing, correspondence, yes. 24 Q. I'm sorry, maybe I 25 misunderstood. Are you saying that you</p>	<p>1 A. That's correct. This is 2 pretyped to save time. 3 Q. I'm not sure what that has 4 to do with my question. I'm just 5 asking simply, you're saying that on 6 August 11, 2010 you placed Deposition 7 Exhibit 10 in Mr. Taraba's mailbox but 8 placed the handwritten note about the 9 vehicle issue on his desk? 10 A. Yes. 11 Q. You also testified that you 12 complained to OSHA in 2010 about the 13 vehicle issue? 14 A. Correct. 15 Q. You placed a phone call to 16 OSHA on August 20th, 2010, is that 17 right? 18 A. Telephone communications, 19 yes. 20 - - - - - 21 (Thereupon, Deposition 22 Exhibit-11 was marked for 23 purposes of identification.) 24 - - - - - 25 Q. Handing you what's been</p>
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<p>1 didn't write this letter? 2 A. I didn't say that. 3 Q. You did write this letter? 4 A. Yes. 5 Q. When you left the note for 6 Mr. Taraba concerning the vehicle issue 7 on August 11, 2010 did you -- on his 8 desk I think is what you testified to, 9 did you leave that note together with 10 Deposition Exhibit 10? 11 A. Say that again, please. 12 Q. When you left Mr. Taraba the 13 note concerning the vehicle issue on 14 August 11, 2010, did you leave that note 15 on Mr. Taraba's desk together with 16 Deposition Exhibit 10? 17 A. No, I put it in his mailbox. 18 Q. Put which in his mailbox? 19 A. The Exhibit 10. I believe 20 so. 21 Q. So to make sure I 22 understand, you put Deposition Exhibit 23 10 in Mr. Taraba's mailbox but you put 24 the handwritten note concerning the 25 vehicle issue on his desk?</p>	<p>1 marked Deposition Exhibit 11, I don't 2 think you've seen this document before. 3 This is a document that OSHA provided to 4 us in response to our FOIA request. 5 What I'm really looking for from this 6 is, does this document accurately 7 reflect in paragraph 1 the vehicle issue 8 that you communicated to OSHA on August 9 20th, 2010? 10 A. Yes. 11 Q. Going back to something you 12 actually said a few moments ago, I think 13 you said while you were at the 14 Youngstown facility on August 11th, 2010 15 to check to see if your unions dues 16 receipt was on the board and to deliver 17 Deposition Exhibit 10 to Mr. Taraba you 18 said you noticed the forklift issues? 19 A. When I went out on the 20 floor. 21 Q. Were the forklifts that you 22 were referring to having issues, those 23 were in use at that time? 24 A. Yes. 25 Q. Does Deposition Exhibit 11</p>



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<p>1 refresh your recollection about which 2 forklifts you were identifying as having 3 the issues that were in service on 4 August 11th, 2010? 5 A. Repeat that. 6 Q. Does Deposition Exhibit 11 7 refresh your recollection about the 8 forklift trucks that you were 9 complaining about that were in service 10 as you witnessed them on August 11, 11 2010? 12 A. Sure. 13 Q. And how does that refresh 14 your recollection, what trucks were 15 those? 16 A. Fork trucks, the gas fork 17 trucks need attention, not safe, not 18 working properly. 19 Q. Sir, maybe I wasn't clear, 20 maybe it was a bad question. I'm 21 looking, and I'll point to it because 22 maybe this will be helpful. 23 A. Sure. 24 Q. There's a notation there that 25 says location fork trucks number 23, 25</p>	<p>1 (Thereupon, Deposition 2 Exhibit-12 was marked for 3 purposes of identification.) 4 - - - - - 5 Q. Showing you what's been 6 marked Deposition Exhibit 12, this is a 7 document that you produced -- sorry, 8 Mike -- to us in discovery. Again, 9 there's some highlighted portions that 10 we copied as is for purposes of the 11 document, that's highlighting that you 12 placed on the document, Mr. Potts? 13 A. Sure, for my lawyer to look 14 at. 15 Q. Looking at Deposition Exhibit 16 12 that you have in front of you, 17 you've highlighted, as you said the 18 letter was dated August 20th, 2010, 19 addressed to you and it starts off by 20 saying, "The purpose of this letter is 21 to acknowledge the receipt of your 22 formal complaint and to inform you that 23 an inspection of your workplace will be 24 scheduled as soon as possible, in 25 accordance with the priorities</p>
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<p>1 and 40, do you see that? 2 A. Oh, yeah, yeah, yeah. 3 Q. Are those the trucks that 4 you were complaining of to OSHA that 5 were in service on August 11, 2010 that 6 you saw vehicle issues with? 7 A. One of the numbers I don't 8 believe was a correct number. I think 9 I might have used 40. I think it was a 10 bigger number, but yeah. 11 Q. So understanding that 40 may 12 not have been correct you were 13 identifying for OSHA the trucks that you 14 witnessed as being in service on August 15 11, 2010 that had the issues that you 16 identified to OSHA? 17 A. Yes, I remember and recollect 18 now. Thank you. 19 Q. OSHA then sent you 20 correspondence confirming that you had 21 submitted a complaint, do you recall 22 that? 23 A. Yes, August 20th, 2010, 24 absolutely. 25 - - - - -</p>	<p>1 established by the agency." Did I read 2 that correctly? 3 A. Yes. 4 Q. Did you tell OSHA when you 5 called on August 20th, 2010 that you 6 were on layoff status since September 7 21st of 09? 8 A. No. 9 Q. Letter goes on to say, 10 second paragraph, let's skip to -- well, 11 strike that. Second paragraph starts, 12 "Section 11(c) of the OSH Act provides 13 protection for employees against 14 discrimination because of their 15 involvement in protected safety and 16 health related activity. If you are 17 being treated differently or action is 18 being taken against you because of your 19 safety or health activity, you may file 20 a complaint with OSHA. You should file 21 this complaint as soon as possible since 22 OSHA normally can accept only those 23 complaints filed within 30 days of the 24 alleged discriminatory action." Did I 25 read that correctly?</p>



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<p>1 A. Word for word.</p> <p>2 Q. So when you received this</p> <p>3 correspondence you understood that if</p> <p>4 ABC engaged in some action that you</p> <p>5 thought was directly related to your</p> <p>6 complaint to OSHA you could file a</p> <p>7 complaint with OSHA, is that right?</p> <p>8 A. Repeat that, please.</p> <p>9 Q. When you received this letter</p> <p>10 and read it you understood that if ABC</p> <p>11 took some action in relation to your</p> <p>12 employment that you believed was because</p> <p>13 of this complaint to OSHA, that you</p> <p>14 could file a complaint with OSHA?</p> <p>15 A. I've been informed of Section</p> <p>16 11(c), yes.</p> <p>17 Q. Did you file a complaint</p> <p>18 with OSHA in relation to any conduct</p> <p>19 that ABC engaged in as a result of your</p> <p>20 complaint about the vehicle issue?</p> <p>21 A. No.</p> <p>22 Q. Do you recall that OSHA also</p> <p>23 sent you correspondence informing you</p> <p>24 that they had notified ABC a complaint</p> <p>25 had been filed?</p>	<p>1 that encloses a letter to ABC of that</p> <p>2 same date, September 17th, 2010?</p> <p>3 A. Yes, I received this</p> <p>4 material.</p> <p>5 Q. Looking at the first</p> <p>6 paragraph of this letter to you you</p> <p>7 highlighted, "In response to your</p> <p>8 complaint of health and safety hazards</p> <p>9 at American Bottling Company the</p> <p>10 Occupational Safety and Health</p> <p>11 Administration (OSHA) has notified</p> <p>12 American Bottling Company requesting</p> <p>13 that the appropriate action be taken to</p> <p>14 correct the situation. Enclosed is a</p> <p>15 copy of that letter for your</p> <p>16 information." Did I read that</p> <p>17 correctly?</p> <p>18 A. Word for word.</p> <p>19 Q. Next paragraph that you</p> <p>20 didn't highlight says, "We have not</p> <p>21 revealed your identity to the employer."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Any reason to believe that</p> <p>25 OSHA wasn't telling you the truth that</p>
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<p>1 A. Say that again, please.</p> <p>2 Q. Do you also recall that OSHA</p> <p>3 sent you correspondence informing you</p> <p>4 that the agency had notified ABC a</p> <p>5 complaint had been filed?</p> <p>6 A. Yes.</p> <p>7 - - - - -</p> <p>8 (Thereupon, Deposition</p> <p>9 Exhibit-13 was marked for</p> <p>10 purposes of identification.)</p> <p>11 - - - - -</p> <p>12 Q. Deposition Exhibit 13, this</p> <p>13 is correspondence from OSHA dated</p> <p>14 September 17th, 2010 to you enclosing a</p> <p>15 copy of what appears to be</p> <p>16 correspondence of the same date,</p> <p>17 September 17, 2010, to a Derick Bogard,</p> <p>18 B O G A R D, of the American Bottling</p> <p>19 Company in Youngstown. Would you agree</p> <p>20 with that characterization of this</p> <p>21 document?</p> <p>22 A. Clarify, repeat.</p> <p>23 Q. I'm just asking, am I</p> <p>24 accurately representing that this is a</p> <p>25 letter to you dated September 17th, 2010</p>	<p>1 they had not informed ABC that you had</p> <p>2 filed a complaint on August 20th, 2010</p> <p>3 related to ABC Youngstown?</p> <p>4 A. Repeat the question.</p> <p>5 Q. Any reason to believe OSHA</p> <p>6 wasn't telling you the truth that they</p> <p>7 had not revealed your identity to ABC</p> <p>8 concerning the complaint you submitted</p> <p>9 on August 20th, 2010 about the</p> <p>10 Youngstown facility vehicle issue?</p> <p>11 A. Discussion with the assistant</p> <p>12 area director Joseph Warner.</p> <p>13 Q. What did Mr. Warner say to</p> <p>14 you that led you to believe OSHA was</p> <p>15 not telling you the truth in this</p> <p>16 letter, that they had not revealed your</p> <p>17 identity to ABC?</p> <p>18 A. On August 26th, 2010 he said</p> <p>19 he's not going to inspect the place.</p> <p>20 Q. I'm sorry, I'm not sure you</p> <p>21 answered my question. Maybe you have</p> <p>22 and we just need to probe it a little</p> <p>23 bit more, but what I'm asking you is,</p> <p>24 there's a conversation you said you had</p> <p>25 with Mr. Warner --</p>



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<p>1 A. Yes.</p> <p>2 Q. -- on August 26th that leads</p> <p>3 you to believe that OSHA is not telling</p> <p>4 you the truth in the September 17th</p> <p>5 letter that they have not revealed your</p> <p>6 identity to ABC?</p> <p>7 A. True.</p> <p>8 Q. What did Mr. Warner say on</p> <p>9 August 26th that led you to believe that</p> <p>10 OSHA is not telling you the truth in</p> <p>11 the September 17, 2010 correspondence?</p> <p>12 A. Again, Mr. Warner said he's</p> <p>13 not going to conduct an inspection, at</p> <p>14 that --</p> <p>15 Q. Anything else? I'm sorry.</p> <p>16 Go ahead.</p> <p>17 A. At that site.</p> <p>18 Q. Anything else Mr. Warner said</p> <p>19 that leads you to believe OSHA is not</p> <p>20 telling you the truth on September 17th,</p> <p>21 2010 that they did not reveal your</p> <p>22 identity to ABC?</p> <p>23 A. He said my employment was</p> <p>24 terminated or I was fired or terminated,</p> <p>25 so obviously there's dialogue about me,</p>	<p>1 something. You have to ask, it's</p> <p>2 probably recorded, being a government</p> <p>3 agency.</p> <p>4 Q. I'm sorry. He said that he</p> <p>5 couldn't get a federal judge to what?</p> <p>6 A. You have to ask him, I don't</p> <p>7 remember what he said, to get something</p> <p>8 to go in there. I was shocked.</p> <p>9 Q. Anything else that Mr. Warner</p> <p>10 said to you on August 26th, 2010 that</p> <p>11 leads you to believe that OSHA was not</p> <p>12 being truthful in its September 17th,</p> <p>13 2010 correspondence that they had not</p> <p>14 revealed your identity to ABC?</p> <p>15 A. I just find it odd that on</p> <p>16 the next page he says, "On September</p> <p>17 17th the Occupational Safety and Health</p> <p>18 Administration received a notice of</p> <p>19 safety and health hazards at your work</p> <p>20 site."</p> <p>21 Q. And you'd agree with me on</p> <p>22 that page your name is nowhere</p> <p>23 mentioned, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. Do you have any knowledge of</p>
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<p>1 somebody is talking about me between</p> <p>2 them.</p> <p>3 Q. I'm sorry. So Mr. Warner</p> <p>4 said, best as you can recall his exact</p> <p>5 words about your employment status?</p> <p>6 A. You have to ask him.</p> <p>7 Q. Well, I'm asking what you</p> <p>8 recall from that conversation. So what</p> <p>9 do you recall, as best you can, were</p> <p>10 Mr. Warner's exact words during the</p> <p>11 August 26th, 2010 conversation you had</p> <p>12 with him about your employment status?</p> <p>13 A. What sticks out, he says I'm</p> <p>14 not an employee.</p> <p>15 Q. Did you ask him how he knew</p> <p>16 that information?</p> <p>17 A. No.</p> <p>18 Q. Anything else Mr. Warner said</p> <p>19 to you on August 26th, 2010 that led</p> <p>20 you to believe OSHA was not telling you</p> <p>21 the truth on September 17th, 2010 that</p> <p>22 they had not revealed your identity to</p> <p>23 ABC?</p> <p>24 A. He said something about he</p> <p>25 can't get a federal judge to grant him</p>	<p>1 OSHA internal operating procedures that</p> <p>2 forbids them from disclosing your name?</p> <p>3 A. I don't know.</p> <p>4 Q. Strike the question, please.</p> <p>5 Do you have any knowledge of OSHA</p> <p>6 internal procedures that forbids OSHA</p> <p>7 from disclosing the name of a</p> <p>8 complainant?</p> <p>9 A. Say that again.</p> <p>10 Q. Do you have any knowledge of</p> <p>11 internal procedures at OSHA that forbids</p> <p>12 OSHA from disclosing the name of a</p> <p>13 complainant who filed a complaint with</p> <p>14 OSHA?</p> <p>15 A. No, I don't know what their</p> <p>16 policies and practices are.</p> <p>17 Q. I don't think I asked you</p> <p>18 this question, I think I asked you just</p> <p>19 as it relates to that page of that</p> <p>20 attachment addressed to Mr. Bogard.</p> <p>21 A. Which --</p> <p>22 Q. Please take the time to look</p> <p>23 through it if you'd like, but would you</p> <p>24 agree with me that your name is nowhere</p> <p>25 mentioned in that letter to Mr. Bogard</p>



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<p>1 of September 17th, 2010 that is part of 2 Deposition Exhibit 13? 3 A. You saying the attachment to 4 your Exhibit 13? 5 Q. Correct. 6 A. I don't see my name, no. 7 Q. Looking back at the first 8 page of -- actually strike the question, 9 please. You said that your recollection 10 is that Mr. Warner said to you you were 11 not an employee, right? 12 A. That's correct. 13 Q. Earlier you said that he 14 made a comment that your employment had 15 been terminated, is that something you 16 also recall Mr. Warner saying? 17 A. Something like that I recall. 18 Q. So as of at least August 19 26th, 2010 you had learned or had been 20 told from someone at OSHA that they 21 believed your employment had been 22 terminated? 23 A. Hearsay, yes. 24 Q. Correct, you didn't hear that 25 from ABC, you were hearing that from</p>	<p>1 A. After the shock set in and 2 it was a little confusing, I was 3 perplexed for a while, but reviewing the 4 contract, the collective bargaining 5 agreement looking to see what remedies 6 were available and I said, well, let's 7 do the wage claim and get paid. 8 Q. And why do you believe that 9 someone was working your job? 10 A. Well, if they said that I'm 11 -- if he instead of they, you can say 12 they also, if Mr. Warner said or alleged 13 that I've been fired, terminated or 14 whatever, I assume I'd have to be 15 replaced. 16 Q. So you filed a grievance 17 because you assumed someone had replaced 18 you in your position and you wanted to 19 get paid? 20 A. Fair enough. Even if any 21 other worker from another department 22 worked, I'm entitled to pay too. 23 Anybody already a member of the 24 bargaining unit, I'm still entitled to 25 pay if they worked my job, my place, et</p>
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<p>1 someone at OSHA? 2 A. Third party, yes. 3 Q. Did you contact ABC to find 4 out what the heck he was talking about? 5 A. Just waited on them. Wait a 6 minute, waiting on them for the OSHA 7 stuff but let me rephrase or correct 8 that and expand. I filed a wage claim, 9 grievance number 11823, because I was 10 puzzled and surprised by his statement. 11 So if they hired anybody, if there's 12 anybody working my job I'm due to get 13 paid under any circumstances. So I 14 said, might as well get paid and sort 15 it out later. So I filed a wage claim 16 August 30th, 2010, grievance number 17 11823. 18 Q. So if I understand your 19 testimony, based on what Mr. Warner 20 shared with you on August 26, 2010 you 21 filed grievance 11823, is that right? 22 A. Repeat that. 23 Q. Based on what Mr. Warner 24 said to you on August 26, 2010 you 25 filed grievance number 11823?</p>	<p>1 cetera, et cetera. 2 Q. And your statement you're 3 entitled to get paid, you're deriving 4 that conclusion from the terms of the 5 collective bargaining agreement, is that 6 right? 7 A. Well, I just looked at that 8 as a vehicle to address and remedy the 9 wage issue and discussion in relating to 10 Mr. Warner saying that there's a 11 termination issue. It surprised me, 12 puzzled me, scared me, made me nervous. 13 So I'm trying to figure out, might as 14 well get paid, just look at the 15 grievance process for a wage claim. 16 Because in the past, when somebody else 17 works overtime and there's seniority 18 issues, they got to pay everybody. So 19 I says, I might as well get paid. 20 Q. And going back to my 21 question which is, you derived your 22 understanding about when you had a right 23 to be paid from the terms of the 24 collective bargaining agreement which 25 governs your employment, correct?</p>



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<p>1 A. Partially, yes. The</p> <p>2 separation of company policies and</p> <p>3 whatever they do.</p> <p>4 Q. What company policies</p> <p>5 dictates your wages and when you're</p> <p>6 entitled to be paid that you're</p> <p>7 referring to?</p> <p>8 A. They made a mistake before</p> <p>9 with pay rates or something, they didn't</p> <p>10 pay people right. So, you know, with</p> <p>11 the CBA it just sets wages for certain</p> <p>12 employees and certain departments, kind</p> <p>13 of like a guideline. Like an employee</p> <p>14 works so much an hour, per hour, rate.</p> <p>15 Q. I'm sorry. Are you saying</p> <p>16 that ABC doesn't have to comply with the</p> <p>17 terms of the collective bargaining</p> <p>18 agreement?</p> <p>19 A. It's a shame that they don't</p> <p>20 in a lot of cases.</p> <p>21 Q. My question is a little</p> <p>22 different. Are you saying they don't</p> <p>23 have to comply with the terms of the</p> <p>24 collective bargaining agreement, that</p> <p>25 it's just a guide?</p>	<p>1 A. Just hearsay, yes. Entitled</p> <p>2 to pay.</p> <p>3 Q. Looking back at Deposition</p> <p>4 Exhibit 13, third paragraph of that</p> <p>5 letter, I'm happy to read it again, I</p> <p>6 think it's probably very similar to what</p> <p>7 we've already seen in Deposition Exhibit</p> <p>8 12, but my question to you is, you</p> <p>9 understood from this correspondence that</p> <p>10 if you believed some action was taken by</p> <p>11 ABC against you that some way related to</p> <p>12 your August 20, 2010 complaint to OSHA,</p> <p>13 that you could file a complaint with</p> <p>14 OSHA?</p> <p>15 A. Same as it was on the August</p> <p>16 20th, 2010 letter, yes.</p> <p>17 Q. So you understood that from</p> <p>18 receiving the September 17th, 2010</p> <p>19 letter as well?</p> <p>20 A. Correct.</p> <p>21 Q. And you didn't file a</p> <p>22 complaint with OSHA after you received</p> <p>23 the September 17th, 2010 correspondence</p> <p>24 either, did you?</p> <p>25 A. Not at that time.</p>
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<p>1 A. Well, they can do -- they</p> <p>2 have the opportunity to choose what they</p> <p>3 want to do and what they don't.</p> <p>4 Q. So you filed this grievance</p> <p>5 11823 on August 30th, 2010?</p> <p>6 A. Yes.</p> <p>7 Q. But you did not file the</p> <p>8 complaint with OSHA at that time</p> <p>9 concerning your termination as it may</p> <p>10 have related to your complaint to them</p> <p>11 of August 20th, 2010?</p> <p>12 A. Well, everything there is</p> <p>13 confusing, it needs to be sorted out</p> <p>14 with regard to pay rates. In other</p> <p>15 words, I'm hearing hearsay, I don't know</p> <p>16 if I believed the guy, I don't know</p> <p>17 what to believe at that point, fired or</p> <p>18 not.</p> <p>19 Q. Well, you certainly filed a</p> <p>20 grievance based on what he said,</p> <p>21 correct?</p> <p>22 A. Well, I filed a grievance</p> <p>23 for wages.</p> <p>24 Q. Based on what Mr. Warner</p> <p>25 told you, correct?</p>	<p>1 Q. Well, I think you testified</p> <p>2 earlier but maybe I got it wrong, have</p> <p>3 you ever filed a complaint with OSHA</p> <p>4 concerning action taken by ABC that you</p> <p>5 felt was a result of your August 20th,</p> <p>6 2010 complaint?</p> <p>7 A. No.</p> <p>8 Q. Now, OSHA subsequently</p> <p>9 informed you, and maybe this is the</p> <p>10 phone call but I think you received</p> <p>11 correspondence too, that an</p> <p>12 investigation was conducted and that any</p> <p>13 alleged violation had been corrected or</p> <p>14 no longer existed, do you recall that?</p> <p>15 A. Repeat that, please.</p> <p>16 Q. Do you recall receiving</p> <p>17 information from OSHA in which they</p> <p>18 informed you that an investigation had</p> <p>19 been conducted and any alleged violation</p> <p>20 was either corrected or no longer</p> <p>21 existed?</p> <p>22 A. Yes, after the August 20th,</p> <p>23 2010 --</p> <p>24 MR. ROSSI: I didn't hear you,</p> <p>25 Robert, speak up.</p>



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<p>1 A. Yes, after the August 20th, 2 2010 correspondence, yes. Sorry, I'll 3 get another drink. 4 - - - - - 5 (Thereupon, Deposition 6 Exhibit-14 was marked for 7 purposes of identification.) 8 - - - - - 9 Q. Showing you what's been 10 marked Deposition Exhibit 14, a document 11 produced by you to us in this 12 litigation. Again, the highlighted 13 copies, my understanding, are your 14 highlights, and this is correspondence 15 dated October 1st, 2010 to you, signed 16 by Joseph Warner with an attachment that 17 appears to be correspondence from Bill 18 Stimmel, branch manager, to Joe Warner 19 at the Department of Labor dated 20 September 23rd, 2010, is that right? 21 A. What did you say about dated 22 23rd? 23 Q. That simply this is appears 24 to be a document sent to you on August 25 1st, 2010 that has an enclosure of</p>	<p>1 findings that the hazardous conditions 2 have been corrected or no longer 3 existed, that you could let OSHA know 4 that? 5 A. Sure. 6 Q. Did you contact OSHA and let 7 them know you disagreed? 8 A. No. 9 Q. You would agree with me that 10 there's nothing in the correspondence 11 from Mr. Warner to you that references 12 your employment status with the American 13 Bottling Company, is that right? 14 A. I don't see anything, no. 15 Q. Going back to discussing your 16 claims in a little more detail, 17 specifically still the whistleblower 18 claim, who do you claim retaliated 19 against you? 20 A. The complaint says American 21 Bottling Company dba 7-Up, Dr. Pepper 22 Snapple Group aka Cadbury Schweppes fka 23 7-Up, I don't know if it say Cadbury 24 Adams, I don't have the complaint, you 25 have it. May I look?</p>
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<p>1 correspondence sent to OSHA by Mr. 2 Stimmel on September 23rd, 2010? 3 A. Oh, yes, correct. 4 Q. So in this October 1st, 2010 5 correspondence to you from Mr. Warner he 6 states in the first paragraph, "American 7 Bottling Company has advised me that the 8 hazards you complained about have been 9 investigated. A copy of the employer's 10 letter is enclosed. With this 11 information OSHA feels the case can be 12 closed on the grounds that the hazardous 13 conditions have been corrected or no 14 longer exist." Did I read that 15 correctly? 16 A. Word for word. 17 Q. It says, "If you do not 18 agree that the hazards you complained 19 about have been satisfactorily abated, 20 please contact us by October 12, 2010." 21 Did I read that correctly? 22 A. Correct. 23 Q. So you understood at the 24 time you received Deposition Exhibit 14 25 that if you disagreed with OSHA's</p>	<p>1 Q. If you'd like but I think 2 maybe you're answering a different 3 question. I'm asking who within the 4 company are you claiming retaliated 5 against you, what individual? 6 A. On its face the complaint 7 says the company, American Bottling 8 Company, dba 7-Up, aka Dr. Pepper 9 Snapple Group, aka Dr. Pepper/Seven Up, 10 fka Cadbury Schweppes Bottling Group. 11 Q. I understand what the 12 complaint says but, respectfully, who 13 within the organization, what individual 14 are you claiming retaliated against you 15 for the vehicle issue complaint? 16 A. Any of the agents. 17 Q. Can you identify one person 18 at the company that you claim took some 19 conduct against you in retaliation for 20 you complaining about the vehicle issue? 21 A. Michael Bobal. 22 Q. Anyone else? 23 A. That's good. 24 Q. No one else other than Mr. 25 Bobal, is that correct?</p>



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<p>1 A. Any agent in the company, 2 you can list them all. 3 Q. Well, for purposes of your 4 claim I need to understand who 5 specifically at the company, what 6 individual? 7 A. Let's see, John Taraba, Bill 8 Stimmel, Michael Bobal, any other names 9 involved with management had input. 10 Q. And presumably you have facts 11 upon which you're basing your assertion 12 that Mr. Bobal, Mr. Taraba and Mr. 13 Stimmel engaged in some conduct that you 14 considered retaliation for your vehicle 15 issue complaint? 16 A. Sure. 17 Q. Well, why don't we talk 18 about Mr. Bobal first. What did Mr. 19 Bobal do that you consider retaliation? 20 A. You know, on September 14th, 21 2010, upon entering the union hall 22 meeting he was together with John Taraba 23 and Bill Stimmel. Upon entering Taraba 24 greeted me, we shook hands. Stimmel 25 greeted me, we shook hands. I extended</p>	<p>1 retaliation for your 2010 vehicle issue 2 complaint? 3 A. Bad demeanor and conduct in 4 the meeting that day and leaving pretty 5 angrily and mad. 6 Q. Any other conduct other than 7 what you've already testified to that 8 you believe Mr. Bobal engaged in that 9 you considered retaliation for your 2010 10 vehicle issue complaint? 11 A. Permanent layoff. 12 Q. Anything else? 13 A. Separation from employment. 14 Q. Is that different from 15 termination? 16 A. Depends. 17 Q. With regard to you is that 18 different from termination? 19 A. Well, I mean, I still have 20 certain benefits that's still ongoing. 21 I got health care coverage, so obviously 22 that's not... 23 Q. And the health care coverage 24 is under COBRA, is that right? 25 A. At this time, yes.</p>
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<p>1 my hand to Mr. Bobal, he didn't shake 2 my hand and I made a comment, I says, 3 oh, you don't want to shake my hand. 4 And then he says we got a harassment 5 issue to deal with. 6 Q. Anything else that Mr. Bobal 7 did that you consider retaliation for 8 your 2010 vehicle issue complaint? 9 A. Well, part of the group, you 10 got termination -- 11 Q. No, Mr. Bobal, I'm asking 12 you, let's talk about Mr. Bobal and if 13 we could -- I'm sorry to interrupt but 14 I think we can streamline this if you 15 just tell me the specific conduct and 16 then we can flesh it out so you'll have 17 a chance to explain? 18 A. Participated in the 19 termination. 20 Q. So Mr. Bobal didn't extend 21 his hand to shake your hand and said we 22 have a harassment issue to deal with and 23 then your termination. Any other 24 conduct that you assert Mr. Bobal 25 engaged in that you considered to be</p>	<p>1 Q. So other than -- and maybe I 2 should list them so we know the universe 3 and you tell me if there's anything 4 else. You have stated that Mr. Bobal 5 did not shake your hand at the September 6 14th, 2010 meeting at the facility, you 7 said we have a harassment issue to deal 8 with, you said your termination, Mr. 9 Bobal's bad demeanor, conduct and 10 leaving the meeting, your permanent 11 layoff and your separation from the 12 company. 13 Other than those items are you 14 asserting Mr. Bobal engaged in any 15 conduct that you deem to be in 16 retaliation for your 2010 complaint 17 about the vehicle issue? 18 A. Specifically permanent layoff 19 and discharge, yes. 20 Q. So are we taking the other 21 items off the table or are you just 22 reasserting those two items? 23 A. Everything is together. 24 Q. So we've covered the universe 25 of conduct that you're saying Mr. Bobal</p>



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<p>1 engaged in that you believe was 2 retaliation for your 2010 vehicle issue 3 complaint? 4 A. Again, I repeat and I said 5 specifically, the permanent layoff and 6 the termination. 7 MS. MCARDLE: Could you repeat my 8 question, please? 9 (Record read.) 10 A. Is that question directed to 11 me? 12 Q. Yes, that's the pending 13 question. 14 A. Yes, sure, fair enough. 15 Q. And why do you think Mr. 16 Bobal -- strike the question, please. 17 Why do you think that conduct by Mr. 18 Bobal was done in retaliation for your 19 2010 vehicle issue complaint? 20 A. Because I'm not working with 21 American Bottling Company anymore. 22 Q. Any other reason? 23 A. That should cover it. 24 Q. With regards to your 25 permanent layoff, and I believe you're</p>	<p>1 believe Mr. Bobal was part of it, is 2 that right? 3 A. Yes. 4 Q. And I'm asking for the facts 5 on which you base your belief that Mr. 6 Bobal was part of that October 15, 2010 7 layoff designation decision? 8 A. Yes, it's a fact Mr. Bobal 9 had part in it. I don't know who he 10 answers to or who tells him to make the 11 decision. 12 Q. And I'm asking for the basis 13 for your statement that it's a fact he 14 took part in that decision? 15 A. Repeat that. 16 Q. I'm asking for the basis for 17 your statement that it's a fact Mr. 18 Bobal took part in that decision? 19 A. The union guys told me I'm 20 permanently laid off. 21 Q. So union guys told you you 22 were permanently laid off, they didn't 23 tell you and Mr. Bobal made that 24 decision, correct? 25 A. He's part of it, correct.</p>
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<p>1 referring to the October 15th, 2010 2 date, correct? 3 A. Yes. 4 Q. Do you know who made the 5 decision to label that a permanent 6 layoff as of that date? 7 A. I don't know, but Mr. Bobal 8 had part in it. 9 Q. Okay. And why do you 10 believe Mr. Bobal had part in it? 11 A. He's a manager. 12 Q. Again, so you're assuming 13 because he's a manager he had a role in 14 the October 15, 2010 permanent layoff 15 designation? 16 A. He had the role in the 17 9-14-2010 discussions in which he left, 18 any grievances and wage claims he's got 19 roles in. 20 Q. Okay. But we're sticking 21 with the October 15th, 2010 designation 22 of a permanent layoff. 23 A. Yes. 24 Q. And you said that you don't 25 know who made that decision but you</p>	<p>1 Q. So we go back to this is an 2 assumption that he's a manager in HR 3 that you believe he must have had part 4 of that decision? 5 A. He's in the grievance process 6 and in the wage claims he signed off on 7 it. 8 Q. Well, I understand that 9 that's your position and that you're 10 drawing an assumption from that 11 position. My question is very simple. 12 Do you have any personal knowledge that 13 Mr. Bobal took part in the decision to 14 designate your layoff as permanent on 15 October 15, 2010? 16 A. Permanent knowledge, no. 17 Q. I'm sorry? 18 A. Permanent knowledge, no. 19 Q. Personal knowledge? 20 A. Personal knowledge, I'm 21 sorry. 22 Q. That's okay. Do you know 23 who was consulted in connection with the 24 October 15, 2010 designation of your 25 layoff as permanent?</p>



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<p>1 A. Meaning consulting whom?</p> <p>2 Q. You're right, it's a bad</p> <p>3 question. Do you know who was consulted</p> <p>4 in making the decision to designate your</p> <p>5 layoff as permanent on October 15, 2010?</p> <p>6 Personal knowledge?</p> <p>7 A. Personal knowledge, I don't</p> <p>8 know a lot of the people in the high</p> <p>9 positions in the company, so no.</p> <p>10 Q. Do you know what information</p> <p>11 was considered in reaching the decision</p> <p>12 to designate your layoff as permanent on</p> <p>13 October 15, 2010?</p> <p>14 A. One of the reasons is on</p> <p>15 9-14-2010 he claimed a harassment issue.</p> <p>16 Q. Do you ask Mr. Bobal what he</p> <p>17 meant by that?</p> <p>18 A. He departed from the meeting,</p> <p>19 didn't finish it, they left.</p> <p>20 Q. Did you ask Mr. Bobal what</p> <p>21 he meant by a harassment issue?</p> <p>22 A. I didn't get the opportunity</p> <p>23 because he left.</p> <p>24 Q. Did you ever contact him and</p> <p>25 ask him what he meant about that issue?</p>	<p>1 Mr. Bobal on August 12th, 2010.</p> <p>2 A. Okay.</p> <p>3 Q. Did you ever receive a</p> <p>4 confirmation of delivery for that?</p> <p>5 A. No, it was ordinary mail.</p> <p>6 I kind had messed these documents</p> <p>7 up.</p> <p>8 Q. So you paid \$1.15 to the</p> <p>9 post office to send something ordinary</p> <p>10 mail?</p> <p>11 A. I know, it was kind of</p> <p>12 expensive, it used to be 90 cents.</p> <p>13 Q. What purpose does a</p> <p>14 certificate of mailing serve, in your</p> <p>15 mind?</p> <p>16 A. I don't know. I just know</p> <p>17 that they have a certificate of mailing</p> <p>18 and I used them here and there before,</p> <p>19 so once in a while I'll use them.</p> <p>20 Q. Any particular reason when</p> <p>21 you decide to use them versus not use</p> <p>22 the certificate of mailing?</p> <p>23 A. I first started using them</p> <p>24 maybe in the 80's, 1980's or something,</p> <p>25 or 90's. I can't remember.</p>
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<p>1 A. He told me never to contact</p> <p>2 him, don't write him, don't telephone</p> <p>3 him, he won't accept letters from me,</p> <p>4 phone calls, e-mails, everything.</p> <p>5 Q. And do you know whether or</p> <p>6 not that was in connection with</p> <p>7 counsel's direction after you had filed</p> <p>8 your lawsuit?</p> <p>9 A. No, it was before he was</p> <p>10 involved.</p> <p>11 Q. What date did Mr. Bobal</p> <p>12 begin telling you not to send him</p> <p>13 letters and correspondence?</p> <p>14 A. Probably October 25th, 2010.</p> <p>15 Q. Probably?</p> <p>16 A. Well, if you give me the</p> <p>17 initial disclosures, based on my memory</p> <p>18 in good faith I'll say October 25th,</p> <p>19 2010.</p> <p>20 Q. And he told you to bring</p> <p>21 those issues to your union, correct?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Just quickly looking at</p> <p>24 Deposition Exhibit 9, it's your</p> <p>25 certificate of mailing for the letter to</p>	<p>1 Q. So did you ever receive any</p> <p>2 confirmation from the post office or</p> <p>3 otherwise that Mr. Bobal received your</p> <p>4 August 12, 2010 correspondence?</p> <p>5 A. That's all I got for</p> <p>6 confirmation, they stamped it.</p> <p>7 Q. And they stamped that at the</p> <p>8 time that you mailed the letter,</p> <p>9 correct?</p> <p>10 A. Yeah.</p> <p>11 Q. Let's talk about Mr. Taraba,</p> <p>12 you identified him as somebody that you</p> <p>13 consider engaged in retaliation for your</p> <p>14 2010 vehicle issue complaint. What did</p> <p>15 Mr. Taraba do that you considered</p> <p>16 retaliation?</p> <p>17 A. Repeat that, please.</p> <p>18 Q. You mentioned Mr. Taraba as</p> <p>19 an individual who you believed engaged</p> <p>20 in retaliation for your 2010 vehicle</p> <p>21 issue complaint, what did Mr. Taraba do</p> <p>22 that you considered retaliation?</p> <p>23 A. Well, during the 9-14-2010</p> <p>24 meeting, you know, we -- everybody</p> <p>25 witnessed and caught him in a lie saying</p>



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<p>1 he recalled me to work.</p> <p>2 Q. Anything else that Mr. Taraba</p> <p>3 did that you considered retaliation?</p> <p>4 A. Misleading all on the</p> <p>5 9-14-2010 meeting.</p> <p>6 Q. I'm sorry, misleading what?</p> <p>7 A. Misleading their positions on</p> <p>8 my wage claim and...</p> <p>9 Q. To what are you referring</p> <p>10 when you say misleading concerning their</p> <p>11 position on your wage claim at the</p> <p>12 9-14-2010 meeting?</p> <p>13 A. On the 9-14-2010 meeting he</p> <p>14 was lying about things and I told him</p> <p>15 don't do that.</p> <p>16 Q. What was Mr. Taraba lying</p> <p>17 about?</p> <p>18 A. He said he called for me to</p> <p>19 return to work.</p> <p>20 Q. What else was Mr. Taraba</p> <p>21 lying about, in your opinion?</p> <p>22 A. He said he -- he said he</p> <p>23 left messages, he said he talked to my</p> <p>24 grandmother. I said, my grandmother is</p> <p>25 85, she would tell me if you called,</p>	<p>1 answered the question so let me just try</p> <p>2 one more time. Anything else that you</p> <p>3 are claiming Mr. Taraba lied about</p> <p>4 during the September 14, 2010 meeting</p> <p>5 other than you said he stated he</p> <p>6 recalled you to work and he'd left</p> <p>7 messages for you at your home?</p> <p>8 A. At the time that was what we</p> <p>9 found out.</p> <p>10 Q. At the time that's what we</p> <p>11 found out, who is we?</p> <p>12 A. I would say I witnessed him</p> <p>13 lying.</p> <p>14 Q. You witnessed him making a</p> <p>15 statement which you interpreted as</p> <p>16 lying, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Do you have an answering</p> <p>19 machine at the Jeanette Drive location?</p> <p>20 A. Yes.</p> <p>21 Q. Is it digital, what kind of</p> <p>22 answering machine is it?</p> <p>23 A. It's got the little micro</p> <p>24 cassette tape about this big, maybe an</p> <p>25 inch and a half or so, real small.</p>
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<p>1 she's been wanting me to go back to</p> <p>2 work.</p> <p>3 Q. I'm sorry, she doesn't want</p> <p>4 you to go back to work?</p> <p>5 A. She wants me to go back to</p> <p>6 work, she's tired of me being around the</p> <p>7 residence, thinks I'm a lazy individual</p> <p>8 not working, it's a disgrace.</p> <p>9 Q. So is there anything else</p> <p>10 that you believe Mr. Taraba lied about</p> <p>11 during the 9-14-2010 meeting that you</p> <p>12 considered retaliation?</p> <p>13 A. Well, like I said, he walked</p> <p>14 out along with Bobal during that</p> <p>15 meeting, so this is the result of it.</p> <p>16 Q. Is there anything else that</p> <p>17 Mr. Taraba did that you considered</p> <p>18 retaliation?</p> <p>19 A. He probably participated in</p> <p>20 the 10-15-10 permanent layoff.</p> <p>21 Q. Anything else?</p> <p>22 A. And termination.</p> <p>23 Q. Anything else?</p> <p>24 A. That should cover it.</p> <p>25 Q. And I'm not sure we actually</p>	<p>1 Q. Mr. Stimmel, you said that</p> <p>2 you believe Mr. Stimmel engaged in some</p> <p>3 conduct that you considered retaliation.</p> <p>4 What conduct did you believe Mr. Stimmel</p> <p>5 engaged in that you considered</p> <p>6 retaliation for your 2010 vehicle issue</p> <p>7 complaint?</p> <p>8 A. Participating input in the</p> <p>9 10-15-10 permanent layoff and</p> <p>10 termination.</p> <p>11 Q. Anything else you believe Mr.</p> <p>12 Stimmel engaged in that you considered</p> <p>13 retaliation for your 2010 vehicle issue</p> <p>14 complaint?</p> <p>15 A. Repeat that, please.</p> <p>16 Q. Anything else that you</p> <p>17 believe Mr. Stimmel did that you</p> <p>18 considered retaliation for your 2010</p> <p>19 vehicle issue complaint?</p> <p>20 A. That covers it.</p> <p>21 Q. Do you know if Mr. Stimmel</p> <p>22 knew you had complained about the</p> <p>23 vehicle issue?</p> <p>24 A. I'm sure.</p> <p>25 Q. Do you have any personal</p>



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<p>1 knowledge that Mr. Stimmel knew you 2 complained about the vehicle issue? 3 A. I don't have any personal 4 knowledge, I haven't seen the man. 5 MS. MCARDLE: I'm just going -- 6 I have one more line of questioning and 7 we can take a break if that's okay with 8 you? 9 MR. ROSSI: Sure. 10 Q. Are there any employees that 11 you believe were treated better than you 12 were who engaged in similar conduct, 13 meaning complained about a vehicle issue 14 or other type of complaint that you're 15 aware of? 16 A. I believe I was the only one 17 who cared about safety, health and 18 safety. None of them guys cared, 19 beating on the forks with hammers to get 20 them started with steel pipes. They 21 don't care if the lights work, go 22 outside in the dark. Stepping over 23 shrink wrap, they don't care. I was 24 probably the only one that cared. 25 Cleaning up shrink wrap. All them</p>	<p>1 say and regret to say but John's son 2 passed away, got killed in a bike 3 accident. They're neighbors so John and 4 Ryan Cozart, John Taraba are pretty 5 close. When Ryan had a DUI in the past 6 they used to clock him in and out years 7 ago, favorable treatment plus he gets 8 more pay than everybody else too. It's 9 not even in the collective bargaining 10 agreement. 11 Q. He being Ryan? 12 A. Yes. Couple other guys get 13 more pay too but nobody cares. 14 Q. Who else gets more pay other 15 than Mr. Cozart? 16 A. I think Ryan Cozart even 17 makes more money than the one guy that's 18 been there since the 60's or 70's. 19 Q. Who's that? 20 A. Sam Rowbottom or Rottenbottom 21 or -- I'm sorry, something with an R. 22 Q. Sam Rowbottom, 23 R O W B O T T O M ? 24 A. Yeah. 25 Q. Anyone other than Ryan</p>
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<p>1 people out there got workers' come 2 claims, I don't have any. 3 Q. You didn't file a workers' 4 comp claim? 5 A. No, I never got hurt out 6 there. 7 Q. Are there any employees at 8 Youngstown that didn't make a similar 9 type of complaint concerning a vehicle 10 issue or otherwise that you think were 11 treated better than you? 12 A. Repeat that question. 13 Q. Are there any employees at 14 Youngstown who did not make a similar 15 type of complaint to the vehicle issue 16 or other, I think you referred to them 17 as safety type of complaints, who were 18 treated better than you? 19 A. Of course. 20 Q. Who were those individuals? 21 A. There's Tony Nicastro who's 22 friends with Danny up front, manger, 23 they golf together. Ryan Cozart and 24 John Taraba, their sons was friends in 25 school with each other. I feel bad to</p>	<p>1 receive more pay? 2 A. Bill DiPiero(sic), I think he 3 gets additional pay. I think Merl(sic) 4 Moyer, he used to get additional pay 5 too. 6 Q. Merrill Moyer? 7 A. M E R R I L L, I think. 8 Q. M E R R I L L, M O Y E R. 9 A. And I think Tony too 10 actually gets more pay because he's a 11 utility guy and they give him other 12 rates. 13 Q. And the basis for your 14 knowledge that these individuals are 15 receiving more pay is what? 16 A. Ryan himself said he gets 17 paid more than everybody and he feels 18 bad that he gets paid more than Sam, 19 payroll records will show it. I seen 20 some records with -- when they made an 21 incorrect pay rate, everybody got 22 additional pay, you can see on the 23 records certain people get paid more and 24 figure them out. But Ryan, he told me 25 directly.</p>



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<p>1 Q. Did you see Ryan's personnel 2 file? 3 A. I'm not in management, how 4 am I going to see his personnel file? 5 Q. So similarly you didn't see 6 the personnel file of any of other 7 individuals you've referenced? 8 A. Say that again, please. 9 Q. Similarly then you didn't see 10 the personnel files of any of the 11 individuals that you just referenced? 12 A. I don't have that privilege. 13 Q. Do you know how long -- with 14 regards to pay I think you included Sam, 15 Merrill, Bill and Tony, do you know how 16 long they've been receiving, as you say, 17 more pay? 18 A. You'd have to ask them. 19 Q. So you don't have any 20 personal knowledge of how long they've 21 been receiving more pay? 22 A. Personal acknowledge? You 23 have to ask them, I don't know. 24 Q. Now, with regards to Tony 25 Nicastro, and that's N I C A S T R O?</p>	<p>1 A. It's obviously a perk, I 2 mean, you got a problem, go see Denny. 3 Q. Is Denny also known as 4 Dennis Barnett? 5 A. No, that's a driver. 6 Q. Right. So Denny is no 7 longer with the company? 8 A. I don't know, you'd have to 9 ask the company agents. 10 Q. Do you recall Denny's last 11 name? 12 A. No, I'm sorry, I don't. 13 Q. And then you mentioned Ryan 14 Cozart and John Taraba being friends, so 15 are you saying that Ryan and John were 16 treated better than you because of their 17 friendship? 18 A. They got a history together, 19 their kids went to school together, 20 special treatment. 21 Q. And what's the special 22 treatment Mr. Cozart received, that was 23 the more pay? 24 A. Well, he can come and go as 25 he please, you know, just different</p>
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<p>1 A. Yeah. 2 Q. You said he was treated 3 better than you because he's friends 4 with Danny, is that what you said? 5 A. Who's Danny? 6 Q. I don't know. You said 7 because he's friends with -- I thought 8 it was Danny who was in front or 9 something like that, what did you -- 10 A. There was a manager named 11 Denny -- 12 Q. Denny, okay. 13 A. -- that he was friends with. 14 I think he got him hired in there, so 15 he got some influence from the front, I 16 guess. 17 Q. And Tony, do you know his 18 hire date? 19 A. Yeah, I have to look at the 20 seniority sheet. 21 Q. So the basis for your 22 statement that Mr. Nicastro was treated 23 better than you is because he's friends 24 with Denny or when Denny worked there he 25 was friends with Denny?</p>	<p>1 stuff that come up, little things. 2 Q. Do you know Mr. Cozart's 3 hire date? 4 A. You have to look at the 5 seniority sheet. 6 Q. How about Mr. Taraba, what 7 special treatment did Mr. Taraba 8 receive? 9 A. What do you mean? 10 Q. I thought that's what you 11 were saying, that Mr. Cozart and Mr. 12 Taraba both were treated better than 13 you? 14 A. Mr. Taraba is a manager, he 15 can do whatever he wants, he can go 16 golfing late in the day if he wants. 17 Q. Now, you said Mr. Nicastro 18 is a utility person? 19 A. Yeah. 20 Q. Mr. Rowbottom, warehouse 21 position? 22 A. The morning day turn, yes. 23 Q. Mr. Moyer is also a 24 warehouse position? 25 A. He used to be. I mean,</p>



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<p>1 whatever, I believe so, yeah, warehouse. 2 I heard he got hurt so they put him on 3 light duty or changed his job because 4 he's got more seniority. Maybe used the 5 procedure to bump somebody out or maybe 6 they posted the job, because he's 7 probably number two so he probably 8 bumped somebody out because he can do 9 that. 10 Q. Was Mr. Moyer morning as 11 well at the time you were aware of him? 12 A. I think at that time he was. 13 I think he bumped somebody or 14 transferred or they created a special 15 job for him. 16 Q. How about Mr. DiPietro, he's 17 warehouse, was he morning as well? 18 A. He was -- excuse me, sorry, 19 he was nights just like me. He got 20 hurt too for a while, I don't know if 21 they put him on light duty. 22 Q. What about Mr. Nicastro, he's 23 warehouse -- oh, no, I'm sorry, you said 24 utility? 25 A. Yes.</p>	<p>1 or something. 2 Q. So you claim that ABC should 3 have issued a COBRA notice to you within 4 44 days of your termination, is that 5 right? 6 A. Is that the law? 7 Q. Well, I'm asking what your 8 claim is. 9 A. Of course. 10 Q. Do you know why ABC didn't 11 issue a COBRA notice until February 12 18th, 2011? 13 A. Because they're dealing with 14 this situation in litigation. 15 Q. You're guessing, right? 16 A. I don't know why that they 17 did that, you have to ask them. 18 Q. Do you know whether ABC has 19 a third party administrator that handles 20 the issuance of COBRA notices? 21 A. Yeah, we went round and 22 round with you with Hewitt Associates, 23 and you said don't call them and then 24 you said call them, so we got a lot of 25 confusion back and forth.</p>
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<p>1 Q. Morning or night? 2 A. Oh, gee, I think he -- I 3 don't know if he had a floating 4 schedule. I think he come in after 5 noon or late morning. His shift 6 interacted with mine. In other words, 7 he was earlier than my time. 8 Q. Earlier than your time of 9 employment or earlier than your start 10 time? 11 A. Start time. 12 Q. Now, let's just touch upon 13 your COBRA claim really briefly. My 14 understanding is that your COBRA claim 15 is that you claim the COBRA notice 16 issued to you by ABC was not timely? 17 MR. ROSSI: I'm sorry, was not 18 what? 19 Q. Timely. 20 A. That's true, that's a fact. 21 Q. That's the basis of your 22 claim, is that you're saying that the 23 COBRA notice issued by ABC was not 24 timely? 25 A. I got it the end of February</p>	<p>1 Q. Well, sir, I don't know what 2 your attorney imparted to you as to 3 communications that I had with him 4 because I certainly haven't talked to 5 you before today, is that right? 6 A. Sure, sure. 7 Q. Do you know whether any 8 computer system errors may have occurred 9 that impacted the issuance of the COBRA 10 notice to you? 11 A. Not that I know of. 12 Q. Do you have any personal 13 knowledge about computer error issues 14 that may have occurred in relation to 15 the issuance of your COBRA notice? 16 A. I don't work in 17 administrative computer programing, no. 18 I don't know, you have to ask them. 19 Q. A subsequent COBRA notice was 20 issued on or about March 23rd, 2011 to 21 you, correct? 22 A. I believe so. 23 Q. So just a little over a 24 month after the first notice went out 25 you received another notice, correct?</p>



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<p>1 A. Yes, due to all the</p> <p>2 confusing phone calls back and forth.</p> <p>3 Q. And then that notice, I</p> <p>4 believe, gave you until May 29th, 2011</p> <p>5 to elect COBRA, correct?</p> <p>6 A. I not sure, the paperwork is</p> <p>7 not in front of me. I assume so.</p> <p>8 Q. And you said you're currently</p> <p>9 receiving health benefits through COBRA,</p> <p>10 correct?</p> <p>11 A. Yes, I have benefits.</p> <p>12 Q. Is that dental only?</p> <p>13 A. At this time.</p> <p>14 Q. Looking back at Deposition</p> <p>15 Exhibit 1, the complaint.</p> <p>16 A. You said 1? I'm sorry.</p> <p>17 Q. Yes. Deposition Exhibit 1.</p> <p>18 A. I got a little disorganized</p> <p>19 here, I apologize. I'm sorry. After</p> <p>20 the holiday weekend.</p> <p>21 Q. Looking at that document you</p> <p>22 would agree with me that that complaint</p> <p>23 was filed on March 1st, 2011?</p> <p>24 A. I have to look. I don't see</p> <p>25 a time stamp. Yeah, yeah.</p>	<p>1 2007, recognizing this is OSHA's</p> <p>2 document to you, do the complaint items</p> <p>3 that OSHA has listed accurately reflect</p> <p>4 the complaint you raised to OSHA on</p> <p>5 September 20, 07?</p> <p>6 A. Say that again, please.</p> <p>7 Q. Do the complaint items that</p> <p>8 OSHA has listed in its letter to you of</p> <p>9 September 27th, 07 accurately reflect</p> <p>10 the items that you raised to OSHA around</p> <p>11 that time? And if it makes it easier</p> <p>12 I'm specifically looking at how in the</p> <p>13 letter it says complaint item 1 and then</p> <p>14 it states something, complaint item 2</p> <p>15 and then it states something, as opposed</p> <p>16 to the results of the OSHA</p> <p>17 investigation.</p> <p>18 A. Appears to be, yes.</p> <p>19 Q. Earlier in your testimony you</p> <p>20 said that you had gone to the Youngstown</p> <p>21 facility on August 11th, 2010 and that's</p> <p>22 when you had the conversation with Mr.</p> <p>23 Cozart you've already testified to,</p> <p>24 correct?</p> <p>25 A. Correct.</p>
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<p>1 Q. And that is the first</p> <p>2 complaint you asserted the COBRA notice</p> <p>3 violation, correct?</p> <p>4 A. Yes.</p> <p>5 MS. MCARDLE: Let's take a break.</p> <p>6 MR. ROSSI: Okay.</p> <p>7 (Recess had.)</p> <p>8 - - - - -</p> <p>9 (Thereupon, Deposition</p> <p>10 Exhibit-15 was marked for</p> <p>11 purposes of identification.)</p> <p>12 - - - - -</p> <p>13 BY MS. MCARDLE:</p> <p>14 Q. Mr. Potts, I'm showing you</p> <p>15 Deposition Exhibit 15, this is the</p> <p>16 letter that you produced and it appears</p> <p>17 to be correspondence from OSHA dated</p> <p>18 September 27th, 2007, addressed to you</p> <p>19 from a Robin Medlock, M E D L O C K.</p> <p>20 Now, again, your claim in this lawsuit</p> <p>21 does not relate to the 2007 complaint to</p> <p>22 OSHA, you testified earlier, correct?</p> <p>23 A. Yes.</p> <p>24 Q. But in looking at this</p> <p>25 complaint that you made in September of</p>	<p>1 Q. Prior to August 11th, 2010</p> <p>2 when was the last time you had</p> <p>3 physically set foot in the Youngstown</p> <p>4 facility?</p> <p>5 A. I can't recall.</p> <p>6 Q. Was it six months before,</p> <p>7 could it have been longer than six</p> <p>8 months before?</p> <p>9 A. Maybe -- yeah, longer than</p> <p>10 six months, definitely.</p> <p>11 Q. So you hadn't -- the</p> <p>12 earliest time, I guess, you had been at</p> <p>13 the Youngstown facility, according to</p> <p>14 your testimony then, prior to August</p> <p>15 11th, 2010 was maybe sometime in January</p> <p>16 or February of 2010, if not earlier?</p> <p>17 A. Probably earlier.</p> <p>18 Q. So how about -- let me ask</p> <p>19 you this question then: Do you believe</p> <p>20 between September 21st of 09 and</p> <p>21 December 31st of 09 you set foot inside</p> <p>22 the Youngstown facility?</p> <p>23 A. Say that again, please.</p> <p>24 Q. Do you believe that between</p> <p>25 September 21st of 09, your layoff, and</p>



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<p>1 December 31st of 09 you set foot inside 2 the Youngstown facility? 3 A. December 31st, 2009? 4 Q. Correct. 5 A. No. 6 Q. Do you believe then that the 7 August 11th, 2010 date was the first 8 time you had set foot in the facility 9 since your layoff of September of 09? 10 A. That sounds about right. 11 Q. Now, you didn't file any 12 kind of complaint concerning the vehicle 13 issue with any other public agency other 14 than OSHA, is that right? 15 A. That's the only agency. 16 Q. And you didn't file a police 17 report concerning anything concerning 18 the vehicle issue either, correct? 19 A. OSHA has the authority, no. 20 Q. And do you know what 21 penalties OSHA would apply to the type 22 of issues you were raising in 2010 23 concerning -- 24 A. What do you mean? 25 Q. Do you know what penalties,</p>	<p>1 A. Yeah, yes. 2 Q. Is that your handwriting? 3 A. It appears to be. 4 Q. And this is a copy of the 5 agreement between Seven Up Youngstown, a 6 subsidiary of the Dr. Pepper/Seven-Up 7 Bottling Group, DPSUBG, and Teamsters 8 Local 377 for the period January 29, 9 2006 through January 28, 2010, correct? 10 A. Absolutely. 11 Q. Is it your understanding that 12 the terms of this agreement governed 13 your participation in the bargaining 14 unit for Teamsters Local 377 during 15 those dates? 16 A. What do you mean? 17 Q. If you had a question 18 concerning wages, vacation, or 19 otherwise, as a member of the bargaining 20 unit for Teamsters Local 377 you'd pick 21 up the contract and look at it, correct? 22 A. Sure, sure. 23 Q. This document for ease is 24 Bates labeled ABC 56 through ABC 77, if 25 you could turn to ABC 59 for me,</p>
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<p>1 if any, OSHA would apply or be able to 2 apply to the type of issues you raised 3 that were the vehicle issues? 4 A. Whatever they decide. 5 Q. So you don't know kind of 6 the universe of penalties OSHA may be 7 able to apply to the vehicle issues you 8 raised in 2010? 9 A. I'm not familiar with all 10 that code language. 11 - - - - - 12 (Thereupon, Deposition 13 Exhibit-16 was marked for 14 purposes of identification.) 15 - - - - - 16 Q. Handing you what's been 17 marked Deposition Exhibit 16, you have 18 seen this document before, correct? 19 A. Yes. 20 Q. And actually if you would 21 flip through Deposition Exhibit 16 22 there's some handwriting throughout the 23 document. Do you agree with me there's 24 some handwriting throughout that 25 document?</p>	<p>1 please, and let me know when you're 2 there. 3 A. I'm there. 4 Q. Section 1 under Article 1, 5 recognition, the last sentence of 6 Section 1 states, "Delivery drivers, 7 warehousemen, vendor special service 8 employees and merchandisers are 9 sometimes hereinafter referred to 10 collectively as 'employees'." Did I 11 read that correctly? 12 A. Word for word. 13 Q. So you understood after you 14 reviewed the contract that at times 15 during the contract when the contract 16 referred to employees that it meant 17 collectively those categories of 18 services? 19 A. Yeah, it's strange it doesn't 20 say utility. Yes. I never knew that. 21 MR. ROSSI: Wait for a question. 22 THE WITNESS: Sorry. 23 Q. Turning to the next page, 24 there's a section entitled probationary 25 employees, do you see that?</p>



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<p>1 A. Yes.</p> <p>2 Q. The section, numbered Section</p> <p>3 3 and it starts, "A new employee shall</p> <p>4 work under the provision of this</p> <p>5 agreement but shall be employed on a</p> <p>6 trial basis until he has actually worked</p> <p>7 90 days within six calendar months,</p> <p>8 during which period he may be discharged</p> <p>9 without further recourse," and then it</p> <p>10 goes on. Did I read that portion</p> <p>11 correctly?</p> <p>12 A. Word for word.</p> <p>13 Q. So you understood that when</p> <p>14 you started with ABC that you were a</p> <p>15 probationary employee until a period of</p> <p>16 90 days had elapsed at which time you</p> <p>17 may be retained?</p> <p>18 A. Correct.</p> <p>19 Q. Last sentence of that section</p> <p>20 states, "During the probationary period</p> <p>21 a new employee shall be paid the wage</p> <p>22 rates in Article X, Section 2," and then</p> <p>23 there's some handwriting.</p> <p>24 A. Okay.</p> <p>25 Q. Did I read the section of</p>	<p>1 at Article 3, management, Section 1.</p> <p>2 This states, "It is agreed that the</p> <p>3 operation of the territories and the</p> <p>4 direction of the delivery drivers and</p> <p>5 all other employees, including the</p> <p>6 making and enforcing of rules to insure</p> <p>7 orderly and efficient territory and</p> <p>8 warehouse/special services operation,</p> <p>9 including the increase or decrease of</p> <p>10 territories, the determining of same</p> <p>11 employees competency, the right to hire,</p> <p>12 to transfer, to promote, to demote, to</p> <p>13 discharge for cause, to lay off for lack</p> <p>14 of work, are rights vested exclusively</p> <p>15 in the management of the company." Did</p> <p>16 I read that correctly?</p> <p>17 A. Very good.</p> <p>18 Q. Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. Thank you. So you</p> <p>21 understood by reading this clause that</p> <p>22 there were certain employment actions</p> <p>23 that management reserved exclusive right</p> <p>24 to make, correct?</p> <p>25 A. Right.</p>
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<p>1 the contract correctly?</p> <p>2 A. It appears so.</p> <p>3 Q. Then there's a section next</p> <p>4 -- that follows, I should say, called</p> <p>5 seasonal employees, and that's Section</p> <p>6 4. And this reads in part, "Seasonal</p> <p>7 employees may be hired from April 1st to</p> <p>8 September 30th inclusive and November</p> <p>9 1st to January 15th inclusive. Seasonal</p> <p>10 employees shall be required to join the</p> <p>11 union after 30 days worked for the</p> <p>12 employer in any one or more seasonal</p> <p>13 periods, provided, however, seasonal</p> <p>14 employees will not be entitled to any</p> <p>15 contractual benefits other than the</p> <p>16 negotiated wage stated in Article X,</p> <p>17 Section 3 of this agreement." Did I</p> <p>18 read that correctly?</p> <p>19 A. Word for word.</p> <p>20 Q. So you understood by reading</p> <p>21 this agreement that Dr. Pepper could</p> <p>22 hire seasonal employees during those</p> <p>23 designated time frames, correct?</p> <p>24 A. Sure.</p> <p>25 Q. Turning the page, let's look</p>	<p>1 Q. Have you heard of this</p> <p>2 clause referred to as the management</p> <p>3 rights clause?</p> <p>4 A. Yes.</p> <p>5 Q. Turning to ABC 63.</p> <p>6 A. Say that again, please.</p> <p>7 Q. Sure.</p> <p>8 MR. ROSSI: 63.</p> <p>9 Q. ABC 63.</p> <p>10 A. Got it, got it.</p> <p>11 Q. This is Article 7 as it</p> <p>12 relates to grievance procedures and I'm</p> <p>13 looking specifically at Section 2-Step</p> <p>14 1, do you see that section?</p> <p>15 A. Yes.</p> <p>16 Q. And that says in part, "If</p> <p>17 an employee has a grievance he shall</p> <p>18 reduce such grievance in writing and</p> <p>19 present it to the company within five</p> <p>20 working days after its alleged</p> <p>21 occurrence." Did I read that correctly?</p> <p>22 A. Word for word.</p> <p>23 Q. So you understood that if</p> <p>24 you did have a grievance with company</p> <p>25 you could file that grievance but had to</p>



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<p>1 do so within five working day after the 2 alleged incident had occurred? 3 A. Five working days, yes. 4 Q. Let's turn to ABC 65, a 5 section called call back pay, Section 4, 6 and I can certainly read that into the 7 record but my question for you is this, 8 please read that Section 4 and let me 9 know what you've done so. 10 A. Okay. 11 Q. So from reading the contract 12 you understood that merchandisers may 13 work up to seven days a week, the first 14 five days eight-hour shifts at regular 15 rate, sixth day one and a half times 16 their regular rate, seventh day at two 17 times their regular rate? 18 A. That's what it says, it 19 indicates it. 20 Q. Turn to ABC 67, Section 8, 21 and this is part of Article X, wages. 22 This states, "In the event any employee 23 is transferred or assigned by the 24 employer to work in a different 25 classification they shall be paid the</p>	<p>1 Q. All right. Section 1, this 2 section states in part, "The seniority 3 rights of all employees shall be 4 determined from the last date of hiring. 5 Immediately after signing this agreement 6 a seniority list for delivery drivers, a 7 seniority list for warehousemen and a 8 seniority list for special service 9 employees, merchandisers and utility as 10 well as a plant-wide seniority will be 11 posted upon the bulletin board for a 12 period of 30 days, after which the list 13 will be deemed to be correct." Did I 14 read that correctly? 15 A. Word for word. 16 Q. So you understood that after 17 this contract was entered into and a 18 seniority list had been posted, 30 days 19 after the posting of that that seniority 20 list was correct and what the company 21 would use for purposes of any employment 22 decisions, correct? 23 A. Unless in a dispute, correct. 24 Q. Unless a dispute of what? 25 A. The next couple sentences.</p>
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<p>1 highest prevailing rate for all hours of 2 work (any employee in a I rate shall be 3 transferred at the I rate. Any employee 4 in a II rate shall be transferred at 5 the II rate)." Did I read that 6 correctly? 7 A. Word for word. 8 Q. So you understood that in 9 the event an employee was transferred or 10 reassigned by the company to a different 11 job classification they would be making 12 the highest prevailing rate for their 13 work, correct? 14 A. Correct. 15 Q. And by job classification, I 16 think we've been referring to that 17 throughout the deposition, but that 18 includes things like drivers, vending, 19 warehouse, and merchandising, correct? 20 A. Correct. 21 Q. Let's turn to ABC 69, 22 Article 14, seniority. 23 A. Oh, sorry. 24 Q. Are you there? 25 A. Yes.</p>	<p>1 Q. Okay. But prior to the next 2 couple sentences, because I think we're 3 missing each other on this, that under 4 the terms of the contract, if there's no 5 challenge to that seniority list within 6 30 days of executing the contract that 7 list is deemed correct? 8 A. From the CBA 2006 to 2010. 9 Q. Yes. 10 A. Yes. 11 Q. Now, the next section that 12 you're alluding to reads, "In addition, 13 upon request from the union, the company 14 shall provide seniority lists for all 15 classifications as well as plant-wide 16 seniority every six months. In any case 17 of a dispute the records of the company 18 shall be binding unless proven 19 incorrect." Did I read that section 20 correctly? 21 A. Word for word. 22 Q. So you understood the union 23 had the ability to request from the 24 company seniority lists every six months 25 for all classifications as well as</p>



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<p>1 plant-wide seniority, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And that if there was</p> <p>4 dispute about seniority or those lists,</p> <p>5 that company records were binding unless</p> <p>6 there was proof they were not correct?</p> <p>7 A. Yeah, if somebody chose</p> <p>8 otherwise, yeah.</p> <p>9 Q. The next section, "Plant-wide</p> <p>10 seniority shall apply for purposes of</p> <p>11 permanent layoff, recall from layoff and</p> <p>12 job/annual bidding. However, in the</p> <p>13 event of a permanent layoff due to</p> <p>14 elimination of a position the affected</p> <p>15 employees are entitled to bump by</p> <p>16 seniority and qualifications until the</p> <p>17 least senior employee is displaced, in</p> <p>18 the event of temporary layoffs</p> <p>19 classification seniority shall prevail."</p> <p>20 Did I read that correctly?</p> <p>21 A. Yes. May I also have a pen,</p> <p>22 please?</p> <p>23 Q. Did you want to write on the</p> <p>24 exhibit?</p> <p>25 A. Am I allowed?</p>	<p>1 the event of any temporary layoff,</p> <p>2 classification seniority prevails,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Let's turn to ABC 70. I'm</p> <p>6 looking at Section 9 which is still part</p> <p>7 of seniority. It states in part, "Under</p> <p>8 the following conditions any employee</p> <p>9 shall lose his seniority (terminated --</p> <p>10 " it says fro employment, close parens,</p> <p>11 but you'd agree with me that probably</p> <p>12 should say for -- or from employment,</p> <p>13 excuse me, correct?</p> <p>14 A. Sure.</p> <p>15 Q. Makes more sense if it says</p> <p>16 terminated from employment than</p> <p>17 terminated fro employment?</p> <p>18 A. Sure, a typo.</p> <p>19 Q. Right. And then it lists a</p> <p>20 number of these conditions under which</p> <p>21 an employee shall lose seniority,</p> <p>22 including subsection D on the next page,</p> <p>23 ABC 71, which states, "If he fails to</p> <p>24 return to work within three days after</p> <p>25 notice from the company to return unless</p>
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<p>1 Q. Sure. If you'd like to.</p> <p>2 A. Or a highlighter, can I use</p> <p>3 a highlighter?</p> <p>4 Q. So there's no confusion why</p> <p>5 don't we use the blue pen --</p> <p>6 A. All right.</p> <p>7 Q. -- because I think there's</p> <p>8 black on there currently.</p> <p>9 A. Sure.</p> <p>10 Q. So from this section you</p> <p>11 understood that in the event of a</p> <p>12 permanent layoff, recall from layoff or</p> <p>13 job/annual bidding, plant-wide seniority</p> <p>14 shall apply, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Then you also understood</p> <p>17 though that there was an exception that</p> <p>18 stated, "In the event of a permanent</p> <p>19 layoff due to elimination of a position,</p> <p>20 the affected employees are entitled to</p> <p>21 bump by seniority and qualifications</p> <p>22 until the least senior employee is</p> <p>23 displaced," correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that temporary layoff, in</p>	<p>1 circumstances beyond his control prevent</p> <p>2 him from notifying the company within</p> <p>3 three days. Such notice shall be made</p> <p>4 by registered letter or telegram." Did</p> <p>5 I read that correctly?</p> <p>6 A. Word for word.</p> <p>7 Q. So you understood then if</p> <p>8 the company did contact you to return to</p> <p>9 work and you didn't respond in any way,</p> <p>10 shape or form within three days you</p> <p>11 could lose your seniority, correct?</p> <p>12 A. Sure.</p> <p>13 Q. And be terminated, in fact,</p> <p>14 correct?</p> <p>15 A. Sure.</p> <p>16 Q. Section 13, still in</p> <p>17 seniority, same page, ABC 71, this</p> <p>18 reads, "If an employee is on an</p> <p>19 involuntary layoff he will not lose his</p> <p>20 seniority for a period of one year from</p> <p>21 the date of layoff." Did I read that</p> <p>22 correctly?</p> <p>23 A. Word for word.</p> <p>24 MR. ROSSI: Where is she reading?</p> <p>25 MS. MCARDLE: Section 13, Mike.</p>



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<p>1 MR. ROSSI: Thank you.</p> <p>2 Q. Certainly you understood that</p> <p>3 if you were placed on layoff you</p> <p>4 maintained your seniority for a period</p> <p>5 of one year, correct?</p> <p>6 A. Yes.</p> <p>7 Q. But beyond that, if you were</p> <p>8 laid off for more than one year you</p> <p>9 lost your seniority, correct?</p> <p>10 A. Yes, lost everything, yes.</p> <p>11 Q. Lost everything meaning what,</p> <p>12 you were terminated at that point?</p> <p>13 A. Union benefits, union wages.</p> <p>14 Q. Turning to ABC 72, Article</p> <p>15 16, health and welfare, do you see where</p> <p>16 I am at the bottom of the page?</p> <p>17 A. What page?</p> <p>18 Q. The bottom of --</p> <p>19 MR. ROSSI: 72.</p> <p>20 Q. -- 72. Thanks, Mike.</p> <p>21 A. Oh, yes, yes, yes.</p> <p>22 Q. Article 16, health and</p> <p>23 welfare, Section 1, health and dental</p> <p>24 insurance. This section states in part,</p> <p>25 "It is agreed that each seniority</p>	<p>1 Q. So from reviewing the</p> <p>2 collective bargaining agreement you</p> <p>3 understood that up to the maximum of six</p> <p>4 merchandisers who had achieved 2,000</p> <p>5 work hours in a year were entitled to</p> <p>6 health benefits under the plan, correct?</p> <p>7 A. Yeah, those guys are lucky,</p> <p>8 yeah, they're allowed.</p> <p>9 - - - - -</p> <p>10 (Thereupon, Deposition</p> <p>11 Exhibit-17 was marked for</p> <p>12 purposes of identification.)</p> <p>13 - - - - -</p> <p>14 Q. Showing you what's been</p> <p>15 marked Deposition Exhibit 17, have you</p> <p>16 seen this document before?</p> <p>17 A. Yes.</p> <p>18 Q. This is the agreement between</p> <p>19 7-Up Youngstown and Teamsters Local 377</p> <p>20 for the period January 29, 2010 through</p> <p>21 January 29, 2013, correct?</p> <p>22 A. Yes.</p> <p>23 Q. You would agree with me that</p> <p>24 the terms of this contract would govern</p> <p>25 your employment with ABC from those</p>
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<p>1 employee of the company who has</p> <p>2 completed his probationary period in</p> <p>3 addition to the four most senior</p> <p>4 merchandisers, regardless of number of</p> <p>5 working hours, shall be given an</p> <p>6 opportunity to enroll in the company's</p> <p>7 Flex Plan in existence on January 1st,</p> <p>8 1999." Did I read that correctly?</p> <p>9 A. Word for word.</p> <p>10 Q. Let's flip to the next page,</p> <p>11 ABC 73, Section 4, health benefits,</p> <p>12 merchandisers, do you see where I am?</p> <p>13 A. Yes.</p> <p>14 Q. It's about the middle of</p> <p>15 that paragraph, the sentence begins,</p> <p>16 "the company will allow," do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. "The company will allow</p> <p>20 merchandisers who achieve 2,000 work</p> <p>21 hours to enroll in the Flex Plan then</p> <p>22 in place, up to a maximum up of six</p> <p>23 over the life of this contract." Did I</p> <p>24 read that correctly?</p> <p>25 A. Word for word.</p>	<p>1 dates, January 29, 2010 through January</p> <p>2 29, 2013, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And without reading this into</p> <p>5 the record I'd like you to -- I'm going</p> <p>6 to identify certain sections and I want</p> <p>7 you to read them and let me know if you</p> <p>8 perceive a difference between the 2010</p> <p>9 through 2013 contract verbiage versus</p> <p>10 the 2006-2010 verbiage, okay? That will</p> <p>11 save a little time.</p> <p>12 A. Yes, that supersedes, yes.</p> <p>13 Q. Let's look at ABC 285.</p> <p>14 Article 3, management, section 1.</p> <p>15 A. Yes.</p> <p>16 Q. As you read Section 1 do you</p> <p>17 perceive a difference between this</p> <p>18 version of Section 1 and what we just</p> <p>19 read in the prior contract?</p> <p>20 A. I'll stipulate it would be</p> <p>21 the same.</p> <p>22 Q. How about 291, ABC 291,</p> <p>23 Section 4 of Article 10, wages, same</p> <p>24 question. As you read Section 4 do you</p> <p>25 perceive any differences from the</p>



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<p>1 verbiage in the 2010 to 2013 contract 2 versus the 2006 to 2010 contract? 3 A. I guess I better look at it. 4 What page is the other one on? 5 Q. Sure. The other one is on 6 ABC 67. 7 A. What are we looking at? 8 Q. In ABC 291 it's Section 4. 9 A. Okay. What am I looking at 10 on the other one? 11 Q. Section 8 on 67. 12 A. It looks different. Yeah, 13 it's different. 14 Q. And the difference is that 15 the last section or the last sentence, 16 rather, of the section is different. In 17 the 2010-2013 contract it states, "In 18 the event of a transfer or reassignment 19 by the employer the employees will not 20 be paid less than their current rate 21 unless stipulated by another section of 22 the agreement," correct? 23 A. Correct. Your previous 24 question I didn't look at the -- I 25 didn't defer to it. You want me to</p>	<p>1 this in one shot? Section 7 and 2 Section 10, if you could take a look at 3 Section 7 D and please compare that, if 4 you'd like, to Section 9 D of the prior 5 contract? 6 A. What Bates number, please? 7 Q. Sure. 70. 8 A. Compare it to what? 9 Q. Compare it to Section 9 D, 10 as in David. 11 A. On 7 there's no D. 12 Q. I'm sorry? 13 A. On your Exhibit 16 I don't 14 see D on page -- 15 Q. It's on the next page, that 16 section starts on that page. 17 A. Oh, you said Bates number 18 70. 19 Q. Correct. That's where the 20 section starts. 21 A. Okay. Section D? Yeah, 22 they're different, they run together 23 right off the bat, C and D. 24 Q. But the substance of D and 25 the substance of 7 D?</p>
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<p>1 look at the other one? 2 Q. You can if you want. I'll 3 represent to you it is the same but you 4 can certainly feel free to take a look 5 if you'd like. 6 A. I trust you. 7 Q. Let's look at 293 of the 8 2010-2013 contract. I'm specifically 9 looking, it's Section 1 of the seniority 10 Article 14 section, the portion that 11 begins, "in case of a dispute," do you 12 see where I am? 13 A. Yes. 14 Q. Why don't you read that 15 through seniority shall prevail and -- 16 to yourself, and let me know if you see 17 any difference between that language and 18 the language from the prior contract. 19 A. Where is it at on the prior 20 contract, please? 21 Q. Sure. It is page 69. 22 A. Okay. Jumping back and 23 forth it appears to be the same. 24 Q. Let's turn the page to ABC 25 294, Section 7, and why don't we do</p>	<p>1 A. Yeah, they're different, 2 language is different. 3 Q. And what language is 4 different? It says, the prior contract 5 says, such notice shall be made by 6 registered letter or telegram, 7 whereas -- 8 A. Yeah. 9 Q. -- the subsequent says just 10 by registered letter, that's the 11 difference, correct? 12 A. Yeah, I see that, it's 13 different, yeah. 14 Q. That's the difference you're 15 referring to? 16 A. Yes. 17 Q. And then Section 10 of the 18 new contract and Section 13 of the old 19 contract, new contract is 294, old 20 contract is 71. 21 A. Okay. Section 10 and 22 section what? 23 Q. 13 of the old. 24 A. Okay. Got it. 25 Q. Those are the same, correct?</p>



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<p>1 A. Correct.</p> <p>2 Q. Now, we talked kind of</p> <p>3 generally about your employment with</p> <p>4 ABC, I'd like to go into a little more</p> <p>5 detail.</p> <p>6 A. Sure, go ahead.</p> <p>7 Q. You were hired July of 07 as</p> <p>8 a warehouse loader, correct?</p> <p>9 A. Correct.</p> <p>10 Q. I think we talked about</p> <p>11 this, you worked, we're calling it the</p> <p>12 second shift, you said ABC really didn't</p> <p>13 have a name for it but you didn't start</p> <p>14 until approximately 4:00 p.m., correct?</p> <p>15 A. True.</p> <p>16 Q. Your duties as a warehouse</p> <p>17 loader included reviewing electronic</p> <p>18 orders assigned to truck routes, pulling</p> <p>19 product to filling those orders and</p> <p>20 placing product on trucks for shipment,</p> <p>21 is that right?</p> <p>22 A. What do you mean by</p> <p>23 electronic orders?</p> <p>24 Q. You received orders that came</p> <p>25 into the warehouse or you reviewed</p>	<p>1 take a look and let me know if I have</p> <p>2 that correct.</p> <p>3 A. Appears to be.</p> <p>4 Q. Looking at the first page of</p> <p>5 Deposition Exhibit 25.</p> <p>6 A. Say again, please.</p> <p>7 Q. Sure. Looking at the first</p> <p>8 page of Deposition Exhibit 25, your</p> <p>9 resume?</p> <p>10 A. Yes.</p> <p>11 Q. Is there anything not</p> <p>12 accurate in your resume?</p> <p>13 A. It appears to be in order.</p> <p>14 MR. ROSSI: Did you hear his</p> <p>15 answer?</p> <p>16 MS. MCARDLE: I did, thank you.</p> <p>17 MR. ROSSI: Okay.</p> <p>18 Q. Turning to the application</p> <p>19 portion of Deposition Exhibit 25, same</p> <p>20 question, please take the time you need</p> <p>21 to review the application, but is there</p> <p>22 anything contained in that application</p> <p>23 that is not accurate?</p> <p>24 A. It appears to be in order.</p> <p>25 Q. I notice on -- I'll use the</p>
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<p>1 orders that came into the warehouse,</p> <p>2 we'll say in any form, you pulled</p> <p>3 product to fill those orders and then</p> <p>4 you placed product on trucks for</p> <p>5 shipment?</p> <p>6 A. We had paper documents, load,</p> <p>7 unload, yeah, yeah.</p> <p>8 Q. And generally would you agree</p> <p>9 that Thursday was the warehouse's</p> <p>10 busiest day because of Friday shipments</p> <p>11 for the weekend?</p> <p>12 A. Yeah, kind of doubled up.</p> <p>13 Up.</p> <p>14 - - - - -</p> <p>15 (Thereupon, Deposition</p> <p>16 Exhibit-25 was marked for</p> <p>17 purposes of identification.)</p> <p>18 - - - - -</p> <p>19 Q. Showing you what's been</p> <p>20 marked Deposition Exhibit 25, my</p> <p>21 understanding is this is a copy of the</p> <p>22 resume you submitted to the company and</p> <p>23 the employment applications that you</p> <p>24 filled out around the same time for</p> <p>25 employment with the company, but please</p>	<p>1 Bates number for those because I think</p> <p>2 it's easier, ABC 137.</p> <p>3 A. Okay.</p> <p>4 Q. Under references you've</p> <p>5 listed Michael D. Rossi, and I think</p> <p>6 that says CPA, is that right?</p> <p>7 A. No, it says LPA.</p> <p>8 Q. Oh, LPA. What does LPA</p> <p>9 stand for?</p> <p>10 A. Licensed practicing attorney.</p> <p>11 Q. I've never seen that acronym</p> <p>12 before.</p> <p>13 A. Really?</p> <p>14 Q. Really.</p> <p>15 A. Okay.</p> <p>16 Q. I didn't realize that was</p> <p>17 funny.</p> <p>18 A. I didn't either.</p> <p>19 Q. So you've listed your</p> <p>20 attorney Mr. Rossi, who's sitting here</p> <p>21 presently next to you in your</p> <p>22 deposition, as a reference for</p> <p>23 employment purposes at Dr. Pepper</p> <p>24 Snapple Group, correct?</p> <p>25 A. Well, they wanted references</p>



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<p>1 and that's all I can come up with out 2 of the phone book or whatever. Must 3 not be the phone book, I didn't remember 4 his phone number. 5 Q. Looking down at the bottom 6 of that same page, is that your 7 signature, sir? 8 A. Yes. 9 Q. You signed this on or about 10 June 25th, 2007? 11 A. Say that again. 12 Q. You signed this on or about 13 June 25th, 2007, is that right? 14 A. Yeah, I can't tell, 25th, 15 26th, 27th, 28th. 16 Q. Okay. Sometime in late June 17 of 07 you signed this employment 18 application? 19 A. Sure. 20 Q. Under applicant certification 21 there's some typed -- after the all caps 22 statement which actually says, "Please 23 read the following statements carefully, 24 they constitute the conditions under 25 which you might be employed with the</p>	<p>1 that if hired," do you see where I am? 2 A. No -- okay, yeah, yeah, 3 yeah, yeah. 4 Q. "I understand that if hired 5 my employment is 'at will' which means 6 that it is not guaranteed for any period 7 of time and that my employment and 8 compensation may be terminated by the 9 corporation or myself for any reason at 10 any time with or without advance 11 notice." Did I read that correctly? 12 A. Wow, I never recall that, 13 yeah. At will employment, yes. 14 Q. Well, you have a practice of 15 reading documents before you sign them, 16 sir, right? 17 A. Yeah, okay. I thought it 18 was a union company. I didn't know it 19 was at will, okay. 20 MR. ROSSI: Wait for a question. 21 A. Sorry. I lost my pen. 22 Q. Turning to ABC -- off the 23 record. 24 (Discussion off the record.) 25 Q. Turning to ABC 143.</p>
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<p>1 corporation." 2 It states, "I certify that all 3 the foregoing statements are true and 4 correct to the best of my knowledge. I 5 understand that misrepresentation or 6 omission of fact in this application -- 7 " excuse me, "of facts in this 8 application or during interviews may 9 result in the withdrawal of an offer or 10 disciplinary action including 11 termination if I am hired." Did I read 12 that portion correctly? 13 A. Word for word. 14 Q. So you understood at the 15 time that you signed this application 16 and were certifying to this fact that 17 the statements contained in your 18 application were true and correct to the 19 best of your knowledge and you 20 understood that you could be terminated 21 for any misrepresentations contained in 22 your application, correct? 23 A. Sure. 24 Q. Skipping the paragraph to the 25 next paragraph that begins "I understand</p>	<p>1 A. 140 what? 2 Q. 143. There's a section 3 entitled educational data, do you see 4 that? 5 A. Yes. 6 Q. I couldn't quite read it so 7 I wanted you to please identify, are 8 these three separate high schools that 9 you attended? 10 A. Yes. 11 Q. And what high schools were 12 these? 13 A. Howland High School, Warren 14 G. Harding and Warren Western Reserve 15 High School. 16 Q. From which of these high 17 school did you obtain your high school 18 diploma? 19 A. Howland High School. 20 Q. So was it that you took 21 classes at the other high schools or did 22 you attend them for a period of time? 23 A. I attend all three. 24 Q. I'm assuming not 25 simultaneously, you attended them for</p>



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<p>1 separate periods of time?</p> <p>2 A. Say that again, please.</p> <p>3 Q. I'm assuming not</p> <p>4 simultaneously, you attended them for</p> <p>5 separate periods of time?</p> <p>6 A. A couple of them.</p> <p>7 Q. So, I'm sorry, that was</p> <p>8 simultaneously you're saying?</p> <p>9 A. Couple of them, yes.</p> <p>10 Q. For what purpose were you</p> <p>11 simultaneously attending schools?</p> <p>12 A. Education.</p> <p>13 Q. So you were taking selected</p> <p>14 classes at Warren G. Harding and Warren</p> <p>15 Western Reserve?</p> <p>16 A. Yes, you got it.</p> <p>17 Q. Of these schools, which are</p> <p>18 public schools?</p> <p>19 A. All of them.</p> <p>20 Q. At the bottom of the same</p> <p>21 page it states, "Have you ever been</p> <p>22 convicted of a felony or a misdemeanor</p> <p>23 other than traffic violations," and you</p> <p>24 checked the no box, is that right?</p> <p>25 A. Yeah.</p>	<p>1 acknowledgment states, "Also, the</p> <p>2 company cannot guarantee you a job. All</p> <p>3 employment with the company is</p> <p>4 terminable at will, which means you may</p> <p>5 resign your employment at any time for</p> <p>6 any reason. No one other than the</p> <p>7 president of the company has any</p> <p>8 authority to change the at will nature</p> <p>9 of your employment. No statements by</p> <p>10 any person shall bind the company to</p> <p>11 continue your employment unless they are</p> <p>12 in writing and signed by the president."</p> <p>13 Did I read that correctly?</p> <p>14 A. Word for word.</p> <p>15 Q. So, again, in signing this</p> <p>16 document above your signature which</p> <p>17 reads, "I have read and understood these</p> <p>18 above statements," you were certifying</p> <p>19 to the company that you had read and</p> <p>20 understood the statements set forth in</p> <p>21 the acknowledgements on this page,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Now, we mentioned John Taraba</p> <p>25 earlier in the deposition and I think</p>
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<p>1 Q. So at that point you were</p> <p>2 certifying to ABC that you had never</p> <p>3 been convicted of a felony or</p> <p>4 misdemeanor other than a traffic</p> <p>5 violation?</p> <p>6 A. Yeah.</p> <p>7 - - - - -</p> <p>8 (Thereupon, Deposition</p> <p>9 Exhibit-26 was marked for</p> <p>10 purposes of identification.)</p> <p>11 - - - - -</p> <p>12 Q. Around the same time that</p> <p>13 you completed your employment</p> <p>14 application you completed the document</p> <p>15 or it appears you completed the document</p> <p>16 that I'm handing you that has now been</p> <p>17 marked as Deposition Exhibit 26.</p> <p>18 A. Okay.</p> <p>19 Q. Is that your signature at</p> <p>20 the bottom of Deposition Exhibit 26?</p> <p>21 A. It appears to be.</p> <p>22 Q. And that looks like June 29,</p> <p>23 2007, is that right, that you signed it?</p> <p>24 A. Correct.</p> <p>25 Q. Last paragraph of the</p>	<p>1 you even pulled out his business card</p> <p>2 and read off his job title. My</p> <p>3 question very basically is, as a</p> <p>4 warehouse loader you reported to John,</p> <p>5 is that right?</p> <p>6 A. No, Ryan Cozart.</p> <p>7 Q. So you had no reporting</p> <p>8 relationship to Mr. Taraba?</p> <p>9 A. In my first day hired John</p> <p>10 advised me, instructed me to report to</p> <p>11 Ryan Cozart.</p> <p>12 Q. So, again, you had no</p> <p>13 reporting relationship to Mr. Taraba, is</p> <p>14 that your testimony?</p> <p>15 A. Well, he's the manager but,</p> <p>16 no, Ryan pretty much is the supervisor,</p> <p>17 whatever, foreman.</p> <p>18 Q. So you didn't consider Mr.</p> <p>19 Taraba your supervisor then?</p> <p>20 A. He was the manager, yes.</p> <p>21 Q. So then again I'm confused</p> <p>22 on your answer. You're saying he was</p> <p>23 your supervisor but you didn't report to</p> <p>24 him?</p> <p>25 A. I didn't report to him, I</p>



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<p>1 reported to Ryan Cozart when I got 2 hired, first day he told me report to 3 Ryan Cozart. 4 Q. So from your first day of 5 employment you understood that you 6 reported to Mr. Cozart? 7 A. Yeah, everybody did. 8 Q. Everybody means -- 9 A. In the warehouse. 10 Q. In the entire warehouse? 11 A. At nights. 12 Q. Even on first shift? 13 A. No, Ryan is not on first 14 shift. 15 Q. So your statement refers to 16 employee on the second shift or what 17 we've been calling the second shift? 18 A. Nights. 19 Q. Do you have any idea whether 20 at the time ABC hired you ABC considered 21 you a seasonal employee? 22 A. No. 23 Q. You did have an understanding 24 though that you had probationary status 25 for the first 90 days of your</p>	<p>1 sure. 2 Q. Do you know who made the 3 decision to retain you upon completion 4 of your probationary period? 5 A. You'd have to ask some 6 representative. 7 Q. So you don't know? 8 A. I don't know. 9 Q. Do you know who was involved 10 in the decision to retain you after you 11 completed your probationary period? 12 A. You'd have to contact your 13 client and see, I don't know. 14 Q. Do you know what facts were 15 taken into consideration in deciding to 16 retain you after you completed your 17 probationary period? 18 A. I don't have that privileged 19 information. 20 Q. When you say privileged are 21 you trying to assert that an attorney 22 was involved in that decision? 23 A. I'm not. 24 Q. And after you completed your 25 probationary period you then became</p>
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<p>1 employment? 2 A. Probationary, yes. The 3 grievance is 8291 regarding wages with 4 probation and that should satisfy that. 5 Q. Well -- 6 A. January 3rd, I believe, 2008. 7 Q. Sitting here today are you 8 claiming that you didn't receive wages 9 that you were entitled to for your 10 probationary period? 11 A. Say that again, please. 12 Q. Sitting here today are you 13 trying to claim that you did not receive 14 wages to which you were entitled to 15 during your probationary period? 16 A. I'm not. 17 Q. You completed your 18 probationary period sometime in 19 September of 07, is that right? 20 A. I can't recall. 21 Q. You were hired in July of 07 22 and you had a 90 day probationary 23 period, I guess that would put you, 24 what, in October of 07? 25 A. Not to get picky about it,</p>	<p>1 eligible for certain ABC benefits, is 2 that right? 3 A. Meaning? 4 Q. Different employment 5 benefits, insurance, other things that 6 you became eligible for upon completion 7 of your probationary period, correct? 8 A. Insurance, union benefits, 9 wages, yes. 10 Q. At the time that you started 11 your employment with ABC in 2007 you 12 were aware that at least -- strike the 13 question, please. At the time you 14 started your employment in 2007 were you 15 aware that at least one employee on the 16 day shift was splitting jobs between 17 warehouse and vending? 18 A. Say that again, please. 19 Q. At the time that you were 20 hired in 2007 at ABC were you aware 21 that at least one employee on the day 22 shift was splitting jobs between 23 warehouse and vending? 24 A. When I was hired I didn't 25 know anybody, so no.</p>



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<p>1 Q. After you started did you 2 become aware that an employee was 3 splitting time between warehouse and 4 vending on the day shift? 5 A. I believe there was several 6 people splitting stuff. I can't recall. 7 I believe so. 8 Q. Doug Haus, do you know him? 9 A. Yeah, yeah, I remember him, 10 big guy. 11 Q. And Doug was -- H A U S. 12 And Doug was specifically splitting time 13 between vending delivery and warehouse 14 work, correct? 15 A. I don't know what their 16 arrangements really are. I just know he 17 would make an appearance. 18 Q. And that went back to the 19 beginning of your employment, you recall 20 Mr. Haus making an appearance in the 21 warehouse, correct? 22 A. Yeah, different people make 23 appearance on Thursdays, the heavy day. 24 Q. So you started your 25 employment sometime in July of 07 and</p>	<p>1 may concern and indicates that you'll be 2 on temporary layoff effective January 3 14th, 2008, this will continue for an 4 undetermined length of time, correct? 5 A. Indicating temporary layoff, 6 yes. 7 Q. And it also indicates this 8 will continue for an undetermined length 9 of time, correct? 10 A. Separate sentence, yes. 11 Q. Yes, that is a separate 12 sentence and you understood this was 13 referring to your layoff, correct? 14 A. Sure, it's not a fragment, 15 it's two sentences, correct. 16 Q. Do you have personal 17 knowledge of why you were laid off at 18 that time? 19 A. Personal knowledge? 20 Q. Uh-hum. 21 A. No. 22 Q. Did you ask anyone why you 23 were laid off at that time? 24 A. I can assume. 25 Q. Did you ask anyone why you</p>
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<p>1 then in January of 08 were laid off, 2 correct? 3 A. Correct. Right after my 4 grievance settled. 5 Q. Which grievance are you 6 referring to? 7 A. Let's say it was 82 8 something, 8290. 9 Q. Oh, this is the wage issue 10 that you were referring to about payment 11 as a probationary employee, is that 12 right? 13 A. Sounds right. 14 - - - - - 15 (Thereupon, Deposition 16 Exhibit-27 was marked for 17 purposes of identification.) 18 - - - - - 19 Q. Handing you what's been 20 marked Deposition Exhibit 27, you've 21 seen this document before, correct? 22 A. Yeah, I'm familiar with it. 23 Q. And this document is a 24 letter dated January 11, 2008 that you 25 produced and it is addressed to whom it</p>	<p>1 were laid off in January of 08? 2 A. No. 3 Q. Do you know who made the 4 decision to lay you off at that time? 5 A. No. 6 Q. Do you who was involved in 7 the decision to lay you off at that 8 time? 9 A. Agents of the company. 10 Q. Do you know any individual 11 who was involved in the decision to lay 12 you off at that time? 13 A. At that time I'm not sure. 14 Q. Do you know what facts were 15 taken into consideration when you were 16 laid off or the decision was made to 17 lay you off in January of 08? 18 A. Say that again, please. 19 Q. Do you know what facts were 20 taken into consideration when the 21 decision was made to lay you off in 22 January of 2008? 23 A. What do you mean facts? 24 Q. Do you know what the company 25 considered when it made the decision to</p>



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<p>1 lay you off in January of 08?</p> <p>2 A. You have to ask them, I</p> <p>3 don't know.</p> <p>4 Q. And you were recalled</p> <p>5 sometime in March of 08, is that right?</p> <p>6 A. I don't have the papers in</p> <p>7 front of me.</p> <p>8 - - - - -</p> <p>9 (Thereupon, Deposition</p> <p>10 Exhibit-28 was marked for</p> <p>11 purposes of identification.)</p> <p>12 - - - - -</p> <p>13 Q. Showing you what's been</p> <p>14 marked Deposition Exhibit 28, this is a</p> <p>15 letter that you produced written by you</p> <p>16 on March 31st, 2008 to Teamsters Local</p> <p>17 377.</p> <p>18 A. Oh, the trustee Charlie</p> <p>19 Byrnes, okay.</p> <p>20 Q. Looking at the last -- let</p> <p>21 me ask this: You wrote this letter,</p> <p>22 correct?</p> <p>23 A. Yeah, I drafted it.</p> <p>24 Q. The information certainly you</p> <p>25 wanted to set forth in the document was</p>	<p>1 with Mr. Hoffa, yes, yes.</p> <p>2 Q. When you were recalled in</p> <p>3 March of 2008 you were recalled to your</p> <p>4 warehouse position, correct?</p> <p>5 A. Yes, that's my position,</p> <p>6 warehouse, yes.</p> <p>7 Q. Do you recall that at the</p> <p>8 time you were brought back in March of</p> <p>9 08 several employees were on vacation or</p> <p>10 leaving for vacation shortly after that?</p> <p>11 A. I don't recall right now.</p> <p>12 Q. It's possible, you just don't</p> <p>13 recall?</p> <p>14 A. I don't know. If you say</p> <p>15 someone is on vacation, so be it, it's</p> <p>16 okay.</p> <p>17 Q. And you maintained your</p> <p>18 health benefits during your recall --</p> <p>19 or, excuse me, your layoff period, is</p> <p>20 that right?</p> <p>21 A. They had me on a personal or</p> <p>22 a leave of absence, yeah, I don't know</p> <p>23 why they did that, but yeah.</p> <p>24 Q. You came back in March of 08</p> <p>25 and then you were subsequently laid off</p>
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<p>1 true since you were writing to Teamsters</p> <p>2 Local 377, right?</p> <p>3 A. Sure. My signature isn't</p> <p>4 subscribed upon this, but yeah.</p> <p>5 Q. In the last paragraph of</p> <p>6 this letter you state, "As such,</p> <p>7 regarding said layoff or discharge, it's</p> <p>8 been one working day since being called</p> <p>9 back to work on March 31st, 2008." Did</p> <p>10 I read that correctly?</p> <p>11 A. Word for word.</p> <p>12 Q. Does that refresh your</p> <p>13 recollection that you were recalled to</p> <p>14 work in March of 2008?</p> <p>15 A. Sure.</p> <p>16 Q. Flipping, I think there's a</p> <p>17 second page to that exhibit, is there?</p> <p>18 A. Yeah.</p> <p>19 Q. That appears to be a letter</p> <p>20 from Charlie Byrnes to yourself dated</p> <p>21 April 1st, 2008. Is it your</p> <p>22 understanding this is a response from</p> <p>23 Mr. Byrnes, B Y R N E S, to you to your</p> <p>24 March 31st, 2008 letter?</p> <p>25 A. Yeah, because of my contact</p>	<p>1 in January of 09 again, correct?</p> <p>2 A. It sounds about right.</p> <p>3 - - - - -</p> <p>4 (Thereupon, Deposition</p> <p>5 Exhibit-29 was marked for</p> <p>6 purposes of identification.)</p> <p>7 - - - - -</p> <p>8 Q. Showing you what's been</p> <p>9 marked Deposition Exhibit 29, another</p> <p>10 letter that you produced, this one is</p> <p>11 dated January 9th, 2009 addressed to</p> <p>12 whom it may concern, refers to you, it</p> <p>13 says you'll be on temporary layoff</p> <p>14 effective January 12, 2009. Perhaps</p> <p>15 there's a period missing, I don't know.</p> <p>16 Then it says, "This will continue for an</p> <p>17 undetermined length of time." Did I</p> <p>18 read that correctly?</p> <p>19 A. Yeah, the grammar is</p> <p>20 fragile(sic) in it, you're right, yeah,</p> <p>21 yeah, word for word.</p> <p>22 Q. So you understood in the</p> <p>23 sentence, "This will continue for an</p> <p>24 undetermined length of time," referred</p> <p>25 to your layoff, correct?</p>



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<p>1 A. Say that again, please.</p> <p>2 Q. You understood in the</p> <p>3 sentence, "This will continue for an</p> <p>4 undetermined length of time," that the</p> <p>5 word this referred to your layoff,</p> <p>6 correct?</p> <p>7 A. Defining temporary layoff</p> <p>8 undetermined, yes.</p> <p>9 Q. My question is just simply</p> <p>10 from reading the sentence, "This will</p> <p>11 continue for an undetermined length of</p> <p>12 time," you understood "this" referred to</p> <p>13 your layoff, correct?</p> <p>14 A. Sure, the temporary layoff,</p> <p>15 yes.</p> <p>16 Q. Do you have personal</p> <p>17 knowledge of why you were laid off in</p> <p>18 January of 09?</p> <p>19 A. I don't know. You have to</p> <p>20 ask the company.</p> <p>21 Q. Did you ever ask the company</p> <p>22 why you were laid off in January of 09?</p> <p>23 A. No.</p> <p>24 Q. Do you who made the decision</p> <p>25 to lay you off in January of 09?</p>	<p>1 on layoff?</p> <p>2 A. Say that again, please.</p> <p>3 Q. Once again you stayed on</p> <p>4 company health benefits while you were</p> <p>5 on layoff, correct?</p> <p>6 A. They had me on a leave of</p> <p>7 absence, yes. I don't know why they</p> <p>8 did that. Yes.</p> <p>9 Q. Do you recall that sometime</p> <p>10 in April of 09 you had a conversation</p> <p>11 with Mr. Taraba about when you would be</p> <p>12 recalled and his response was not until</p> <p>13 June of 09 because that coincided with</p> <p>14 vacations?</p> <p>15 A. I don't recall.</p> <p>16 Q. You don't recall one way or</p> <p>17 the other, correct?</p> <p>18 A. When was it?</p> <p>19 Q. April of 09.</p> <p>20 A. I'm not familiar. If you</p> <p>21 say, so be it.</p> <p>22 Q. You were, in fact, recalled</p> <p>23 in June of 09, is that right?</p> <p>24 A. I don't have the paperwork</p> <p>25 in front of me. If you say so, so be</p>
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<p>1 A. You have to ask the company,</p> <p>2 the company agent.</p> <p>3 Q. Do you know who was involved</p> <p>4 in the decision to lay you off in</p> <p>5 January of 09?</p> <p>6 A. You got signatures here,</p> <p>7 these company guys right there, the</p> <p>8 company, what's it say, Stimmel, Fisher,</p> <p>9 Bobal and 377.</p> <p>10 Q. Well, certainly Local 377 is</p> <p>11 not part of the company, correct?</p> <p>12 A. True.</p> <p>13 Q. And my question is, do you</p> <p>14 have any personal knowledge of who was</p> <p>15 involved in the decision to lay you off</p> <p>16 in January of 09?</p> <p>17 A. No.</p> <p>18 Q. So similarly you don't know</p> <p>19 what facts were considered by those</p> <p>20 individuals when they made the decision</p> <p>21 to lay you off in 09, correct?</p> <p>22 A. You have to ask them, I</p> <p>23 don't know.</p> <p>24 Q. Once again you stayed on</p> <p>25 company health benefits while you were</p>	<p>1 it.</p> <p>2 - - - - -</p> <p>3 (Thereupon, Deposition</p> <p>4 Exhibit-30 was marked for</p> <p>5 purposes of identification.)</p> <p>6 - - - - -</p> <p>7 Q. Showing you what's been</p> <p>8 marked Deposition Exhibit 30, a document</p> <p>9 that appears to be from you dated June</p> <p>10 3rd of 09 written to John Taraba. Does</p> <p>11 this document refresh your recollection</p> <p>12 that you returned to work June 8th of</p> <p>13 2009?</p> <p>14 A. It's not -- my signature</p> <p>15 isn't subscribed but it appears to be.</p> <p>16 Q. We haven't really seen any</p> <p>17 typed documents that you submitted where</p> <p>18 your signature was subscribed, correct?</p> <p>19 A. Yeah, I don't know why, but</p> <p>20 yes.</p> <p>21 Q. So this does refresh your</p> <p>22 recollection you were recalled June of</p> <p>23 09, correct?</p> <p>24 A. Yes. I didn't want any</p> <p>25 disruption and more problems, the grief,</p>



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<p>1 just trying to be a good faith, good</p> <p>2 person, yes, courtesy.</p> <p>3 Q. And you were again recalled</p> <p>4 to your warehouse position, is that</p> <p>5 right?</p> <p>6 A. Excuse me. Yes, that's</p> <p>7 correct.</p> <p>8 Q. Coming back in June of 09</p> <p>9 you were then subsequently laid off</p> <p>10 September 21st of 09, correct?</p> <p>11 A. Yeah, that sounds right.</p> <p>12 - - - - -</p> <p>13 (Thereupon, Deposition</p> <p>14 Exhibit-31 was marked for</p> <p>15 purposes of identification.)</p> <p>16 - - - - -</p> <p>17 Q. Handing you what's been</p> <p>18 marked Deposition Exhibit 31, it's a</p> <p>19 document produced by you that contains</p> <p>20 -- sorry, Mike -- the highlighted</p> <p>21 portions and the red writing. This is</p> <p>22 a document dated September 18th, 2009,</p> <p>23 to whom it may concern. It indicates</p> <p>24 you'll be placed on layoff effective</p> <p>25 Monday, September 21, 2009. The next</p>	<p>1 lay you off in September of 2009?</p> <p>2 A. Repeat the question.</p> <p>3 Q. I'm sorry?</p> <p>4 A. Repeat the question.</p> <p>5 Q. Do you know what was taken</p> <p>6 into account when making the decision</p> <p>7 lay you off in September of 09?</p> <p>8 A. What do you mean account?</p> <p>9 Q. What facts were considered</p> <p>10 when whoever made the decision to lay</p> <p>11 you off in September of 09 made that</p> <p>12 decision?</p> <p>13 A. No.</p> <p>14 Q. You stayed on company health</p> <p>15 benefits during this layoff as well,</p> <p>16 correct?</p> <p>17 A. Say that again, please.</p> <p>18 Q. You stayed on company health</p> <p>19 benefits during this layoff as well,</p> <p>20 correct?</p> <p>21 A. Yeah, they had me on leave,</p> <p>22 private leave or something. I don't</p> <p>23 know why they did that, they keep doing</p> <p>24 that. Personal leave or something.</p> <p>25 Yes, health benefits, yes.</p>
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<p>1 sentence, "This layoff will continue for</p> <p>2 an undetermined length of time." Did</p> <p>3 that I read that correctly?</p> <p>4 A. Word for word.</p> <p>5 Q. Do you have personal</p> <p>6 knowledge of why you were laid off in</p> <p>7 September of 09?</p> <p>8 A. No.</p> <p>9 Q. Did you ask?</p> <p>10 A. No.</p> <p>11 Q. Who made the decision -- or</p> <p>12 strike the question, please. Do you</p> <p>13 know who made the decision to lay you</p> <p>14 off in September of 09?</p> <p>15 A. A company agent.</p> <p>16 Q. Do you know what individual</p> <p>17 made the decision to lay you off?</p> <p>18 A. I don't know, you have to</p> <p>19 ask them.</p> <p>20 Q. Do you know who was involved</p> <p>21 in the decision to lay you off in</p> <p>22 September of 09?</p> <p>23 A. You have to ask the company.</p> <p>24 Q. Do you know what was taken</p> <p>25 into account when making the decision to</p>	<p>1 Q. After receiving a copy of</p> <p>2 Deposition Exhibit 31 did you contact</p> <p>3 Mr. Taraba to discuss your layoff?</p> <p>4 A. No.</p> <p>5 Q. Did you contact Mr. Stimmel</p> <p>6 to discuss your layoff?</p> <p>7 A. No.</p> <p>8 Q. When you received a copy of</p> <p>9 Deposition Exhibit 31 on or about</p> <p>10 September 18, 2009 did you contact the</p> <p>11 union to discuss your layoff?</p> <p>12 A. Every month.</p> <p>13 Q. I'm sorry?</p> <p>14 A. Every month, yes.</p> <p>15 Q. You contacted them every</p> <p>16 month beginning September 18th, 2009 to</p> <p>17 discuss your layoff?</p> <p>18 A. Yes, I had pay my dues every</p> <p>19 month.</p> <p>20 Q. Okay. So, I'm sorry, the</p> <p>21 contact you're referring to was to pay</p> <p>22 your dues?</p> <p>23 A. Yeah, and small talk, banter,</p> <p>24 shop talk, et cetera, et cetera.</p> <p>25 Q. Did you also ask when you</p>



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<p>1 were going to be recalled when you</p> <p>2 contacted the union?</p> <p>3 A. During the trusteeship I was</p> <p>4 worried and understand a gray area</p> <p>5 because they removed two officials,</p> <p>6 Colello and DePasquale or whatever his</p> <p>7 name is, for wrongdoing, quote, unquote.</p> <p>8 So the union was kind of in chaos,</p> <p>9 infighting, disorganized, disruption, so</p> <p>10 I kind of kept going down there at the</p> <p>11 hall in Youngstown.</p> <p>12 Q. I'm sorry, you were concerned</p> <p>13 about your recall status because there</p> <p>14 was chaos going on at the union and you</p> <p>15 didn't want you to get lost in the</p> <p>16 shuffle of that chaos?</p> <p>17 A. I didn't want to make them</p> <p>18 pissed but I did know and felt that I</p> <p>19 have to keep paying my dues, especially</p> <p>20 in this time. Plus the contract</p> <p>21 negotiations was ongoing, there was no</p> <p>22 contract, they got to ratify the</p> <p>23 contract. They didn't ratify it until</p> <p>24 March of 2000, what is it, 11, 2011 --</p> <p>25 or 2010, I'm sorry, I misspoke. So I</p>	<p>1 layoff?</p> <p>2 A. No.</p> <p>3 Q. Same question with regards to</p> <p>4 Cindi Fisher, F I S H E R?</p> <p>5 A. Say it again, please.</p> <p>6 Q. Same question with regards to</p> <p>7 Miss Fisher, did you contact Miss Fisher</p> <p>8 on or about September 18th, 2009 to</p> <p>9 discuss your layoff?</p> <p>10 A. Nothing in payroll, no.</p> <p>11 Q. And you say nothing in</p> <p>12 payroll because you understand Miss</p> <p>13 Fisher is in the company's payroll</p> <p>14 department, correct?</p> <p>15 A. Yeah, just past experience</p> <p>16 with her in 2007, payroll, December</p> <p>17 31st, December whatever it was, yeah.</p> <p>18 Q. So other than the union</p> <p>19 conversations you just mentioned did you</p> <p>20 contact anyone about being recalled to</p> <p>21 work after receiving the September 18,</p> <p>22 2009 correspondence?</p> <p>23 A. Just union people.</p> <p>24 Q. So it's your position that</p> <p>25 when you received the September 18th,</p>
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<p>1 made an appearance but sometimes they</p> <p>2 got angry at me so I kind of shied off</p> <p>3 a little bit, just try to keep in good</p> <p>4 contact with them.</p> <p>5 Q. So once again you wanted to</p> <p>6 make sure that your status, your recall</p> <p>7 status, was not lost in the shuffle with</p> <p>8 everything that was going on that you</p> <p>9 just described with the union?</p> <p>10 A. Say that again, please.</p> <p>11 Q. Once again you wanted to</p> <p>12 insure that your recall status was not</p> <p>13 lost in the shuffle with everything that</p> <p>14 you just recounted was going on with the</p> <p>15 union?</p> <p>16 A. I was making sure my</p> <p>17 employment was okay.</p> <p>18 Q. Did the union give you any</p> <p>19 indication your employment was not okay</p> <p>20 in response to your inquiries?</p> <p>21 A. No.</p> <p>22 Q. Did you contact -- on or</p> <p>23 about September 18th, 2009 after</p> <p>24 receiving Deposition Exhibit 31 did you</p> <p>25 contact Mr. Bobal to discuss your</p>	<p>1 2009 correspondence that this was a</p> <p>2 permanent layoff?</p> <p>3 A. No.</p> <p>4 Q. You filed a grievance on</p> <p>5 August 30th --</p> <p>6 A. Yes.</p> <p>7 Q. -- 2011?</p> <p>8 A. That's the wage claim.</p> <p>9 Q. That was 11823, right?</p> <p>10 A. Yeah, it's 118, yeah, you're</p> <p>11 correct, 23. She has nothing to do</p> <p>12 about layoff, it's just a wage claim to</p> <p>13 get paid wages, union benefits. Nothing</p> <p>14 else.</p> <p>15 - - - - -</p> <p>16 (Thereupon, Deposition</p> <p>17 Exhibit-32 was marked for</p> <p>18 purposes of identification.)</p> <p>19 - - - - -</p> <p>20 Q. Handing you what's been</p> <p>21 marked Deposition Exhibit 32, it's a</p> <p>22 copy of the grievance we've been</p> <p>23 discussing, 11823?</p> <p>24 A. Yeah, I wrote it myself.</p> <p>25 Q. In the nature of report</p>



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<p>1 section you have a clause that states, 2 "As the company has assigned others to 3 work," do you see that? 4 A. Where, what are you looking 5 at? 6 Q. The section entitled nature 7 of report, that's where you described 8 your grievance? 9 A. Okay. 10 Q. There's a clause on the 11 third line -- 12 A. Okay, I see it. 13 Q. -- that starts, "As the 14 company has assigned others to work," do 15 you see that? 16 A. Yes. 17 Q. To whom are you referring 18 when you say others to work? 19 A. Any worker. 20 Q. Did you have personal 21 knowledge that somebody had been 22 assigned to work your job? 23 A. What do you mean personal 24 knowledge? 25 Q. Well, maybe I'm making an</p>	<p>1 orders? 2 Q. The amount of orders they 3 were receiving? 4 A. You mean volume? 5 Q. Yes. 6 A. I don't know. What date was 7 that to? 8 Q. Summer of 09. 9 A. Busy season, you should have 10 a lot of orders. 11 Q. When you say busy season are 12 you saying that summer of 09 was busy 13 or generally the summer is a busy 14 season? 15 A. I'm just politely saying the 16 summer is always busy. It's pop season, 17 quote, unquote. 18 Q. But you don't have any 19 personal knowledge of the orders the 20 company was actually receiving, correct? 21 A. No. 22 Q. Now, we talked about this 23 briefly, at least I think you mentioned 24 it before, that you attended a meeting 25 on September 14th, 2010 at ABC about</p>
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<p>1 assumption and you can correct me if I 2 have this wrong, but I thought we talked 3 about this earlier in the deposition 4 that you filed this grievance because 5 you believed that you were laid off and 6 someone was performing your job? 7 A. Well, based on a discussion 8 with Joe Warner from OSHA on the 26th 9 of August, you know, 2010, I'm assuming 10 I had to be replaced and I'm assuming 11 that other workers are covering me if 12 they didn't hire anybody and if they 13 did, I mean, they had a lot of work so 14 I figured they got to bring somebody in. 15 So it's a good educated guess. 16 Q. Did you know or have 17 personal knowledge of the level of 18 orders that the company was receiving in 19 the summer of 09? 20 A. Say that -- 21 Q. Did you have any personal 22 knowledge of the level of orders for 23 product the company was receiving in the 24 summer of 09? 25 A. What do you mean level of</p>	<p>1 your grievance, correct? 2 A. Yes, about this wage claim 3 11823. 4 MS. MCARDLE: Off the record. 5 (Discussion off record.) 6 - - - - - 7 (Thereupon, Deposition 8 Exhibit-33 was marked for 9 purposes of identification.) 10 - - - - - 11 Q. Showing you what's been 12 marked Deposition Exhibit 33, this is a 13 document that you produced to us in 14 discovery with the highlighted portions 15 on there, appears to be a letter to 16 you, a copy to the Teamsters Local 377, 17 Bill Stimmel, John Taraba, and the 18 document is from Mike Bobal. It's dated 19 9-30-2010 and, as you said, it related 20 to grievance 11823? 21 A. Yes. 22 Q. You received a copy of this 23 document as you put highlighted marks on 24 it, correct? 25 A. Certified mail, I signed for</p>



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<p>1 it.</p> <p>2 Q. So we talked a little bit</p> <p>3 about the meeting on September 14th</p> <p>4 earlier but I have a few more specific</p> <p>5 questions about that meeting.</p> <p>6 A. Sure.</p> <p>7 Q. What else -- to the best of</p> <p>8 your recollection, how long was that</p> <p>9 meeting on September 14, 2010?</p> <p>10 A. I can't recall, you have to</p> <p>11 ask the company. I'm sure they timed</p> <p>12 it because I'm sure they got paid for</p> <p>13 it.</p> <p>14 Q. What subjects were discussed</p> <p>15 at the September 14, 2010 meeting?</p> <p>16 A. Collecting bargaining</p> <p>17 subjects.</p> <p>18 Q. What specific subjects as</p> <p>19 they related to your employment with ABC</p> <p>20 were discussed at the September 14, 2010</p> <p>21 meeting?</p> <p>22 A. This is the wage claim issue</p> <p>23 regarding wages, getting paid, with</p> <p>24 other workers working.</p> <p>25 Q. And what other subjects other</p>	<p>1 really resolved at that point.</p> <p>2 Q. So you're saying --</p> <p>3 A. Union reps were pretty much</p> <p>4 backing my side and certified everything</p> <p>5 I'd said and says I'm going to get paid</p> <p>6 my wages and...</p> <p>7 Q. So you're saying Mr. Bobal's</p> <p>8 demeanor changed from the start of the</p> <p>9 meeting to the point when the company</p> <p>10 people left?</p> <p>11 A. Yeah, you could confer with</p> <p>12 your client, it was pretty drastic in</p> <p>13 change.</p> <p>14 Q. Mr. Potts, we're here to</p> <p>15 take your deposition --</p> <p>16 A. Absolutely.</p> <p>17 Q. -- so I can get the facts</p> <p>18 from you. I certainly can confer with my</p> <p>19 client but you filed the lawsuit against</p> <p>20 ABC so I'm entitled to some answers,</p> <p>21 okay?</p> <p>22 A. That's why I'm here.</p> <p>23 Q. Great. Thank you.</p> <p>24 MR. ROSSI: Don't argue with her.</p> <p>25 THE WITNESS: Oh, I'm sorry,</p>
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<p>1 than other workers working were</p> <p>2 discussed during the September 14, 2010</p> <p>3 meeting?</p> <p>4 A. I believe I brought up the</p> <p>5 issue that they didn't call me for</p> <p>6 annual job bidding for the year, since</p> <p>7 the contract was ratified and looks like</p> <p>8 I got left out somewhere, I think.</p> <p>9 Q. Did the company respond?</p> <p>10 A. The result of that meeting,</p> <p>11 they basically walked out and left.</p> <p>12 Q. So you're saying the company</p> <p>13 -- you made a statement about not being</p> <p>14 called for annual job bidding and no one</p> <p>15 from the company responded to you?</p> <p>16 A. You know, there were so many</p> <p>17 subjects, I mean, I just have to just</p> <p>18 -- just jump into it and jump -- it was</p> <p>19 all over the place, so there was a lot</p> <p>20 of different subjects. Because Mr.</p> <p>21 Bobal pretty much turned red in the face</p> <p>22 and his demeanor changed and his conduct</p> <p>23 changed and was upset and angry and they</p> <p>24 decided to end the meeting, just walk</p> <p>25 out, it was incomplete. Nothing was</p>	<p>1 that's --</p> <p>2 MR. ROSSI: Just answer her</p> <p>3 question if she asks one.</p> <p>4 A. I apologize.</p> <p>5 Q. No, it's no offense.</p> <p>6 A. I don't mean to be out of</p> <p>7 line.</p> <p>8 Q. So my question again is, are</p> <p>9 you saying Mr. Bobal's demeanor changed</p> <p>10 from the start of the meeting until the</p> <p>11 point in time when the company people</p> <p>12 left?</p> <p>13 A. Yeah. The other company</p> <p>14 reps was fine, demeanor is good, he was</p> <p>15 the only one.</p> <p>16 Q. And then you said there were</p> <p>17 so many subjects discussed and that's</p> <p>18 really what I'm trying to get a handle</p> <p>19 on.</p> <p>20 A. Yeah.</p> <p>21 Q. You said that there was the</p> <p>22 wage claim, that you were not called for</p> <p>23 annual job bidding and then what other</p> <p>24 subjects were discussed?</p> <p>25 A. Yeah, that's why we were</p>



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<p>1 there. This is a wage claim, annual 2 job bidding, workers from other 3 departments working. We got -- I got 4 the seniority list for the first time, 5 it's dated 9-14-2010. That's when I 6 seen that there are seven or eight 7 people hired under me. That's when we 8 seen that there's no utility 9 classification on the seniority sheet. 10 A lot of information. Seen that another 11 guy was hired the same day I was laid 12 off. All kind of stuff. 13 Q. And I'm looking for the 14 subjects that were discussed at that 15 meeting. So I have wage claim, you 16 were not called for annual job bidding, 17 that other workers were assigned to your 18 work and you received a seniority list. 19 What other subjects? 20 A. The basis of that claim is a 21 wage claim proving that they had other 22 workers in there and doing my job. And 23 I thought I accomplished it and 24 unfortunately the meeting ended, they 25 run out, that was it. Then I get this</p>	<p>1 meeting that the company had someone 2 else working your position? 3 A. Working my jobs, yes. 4 Q. Who was that? 5 A. Many people. 6 Q. You said that someone 7 replaced you so are you not saying that 8 now, there's not somebody who took over 9 your position in the warehouse? 10 A. Let me clarify. I received 11 the seniority list for the first time 12 and take notice or took notice of new 13 employees. 14 Q. New warehouse employees? 15 A. New warehouse, new 16 merchandisers, new drivers, there's a 17 lot of new employees on that sheet. I 18 have taken notice and without question 19 somebody is working in the warehouse. 20 - - - - - 21 (Thereupon, Deposition 22 Exhibit-34 was marked for 23 purposes of identification.) 24 - - - - - 25 Q. Handing you what's been</p>
Page 203	Page 205
<p>1 letter in the mail. 2 Q. You thought you accomplished 3 proving that the company had someone 4 else in your position? 5 A. I thought for my grievance 6 with proving that all those things, that 7 I thought I made a good face, you know, 8 not good -- good faith argument in 9 proving my points to prevail in the 10 grievance on 11823 so I can get paid 11 wages. 12 Q. And, again, you're saying 13 that you feel you proved that the 14 company had someone else in your 15 position? 16 A. Well, I thought that... 17 Q. This is a yes or no 18 question. 19 A. Repeat the question. 20 Q. Are you saying that you 21 proved the company had someone else 22 working your position? 23 A. Repeat that. 24 Q. Are you saying that you feel 25 you proved in that September 14, 2010</p>	<p>1 marked Deposition Exhibit 34, it's a 2 document that you produced highlighting 3 and red pen on the document with the 4 time you produced it. 5 A. Yes. 6 Q. Looking, this appears to be 7 a letter dated September 14, 2010? 8 A. Yes. 9 Q. To the local union? 10 A. Same day pretyped, yes. 11 Q. I'm sorry, you typed this 12 prior to arriving at the meeting? 13 A. Yeah. 14 Q. Didn't you just testify that 15 you received the seniority list for 16 first time at that meeting? 17 A. That's right. I didn't 18 attach it to this. 19 Q. Then I guess I'm unaware how 20 you knew that your name was not last in 21 the plant-wide seniority list at that 22 time? 23 A. I typed this letter up and 24 brought it that day, September 14, 2010. 25 That was my argument at the time and</p>



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<p>1 that was my position and my position was 2 stating permanent layoff. 3 Q. Why did you believe that the 4 subject of permanent layoff was going to 5 be discussed at the September 14, 2010 6 meeting? 7 A. Because my seniority time is 8 good for one year after date of 9 involuntary layoff, which is 10 9-21st-2010. So cutting whatever 11 manipulations and things that they're 12 doing right to the point, laid off a 13 long time, permanent layoff, that's what 14 I jumped into at that time, is my 15 understanding of the information I got. 16 Q. So what you're saying is you 17 were speaking of a permanent layoff 18 because the one year period under the 19 contract was about to expire on 20 September 21st, 2010 and, to use your 21 words earlier in the deposition, that 22 you'd be done for all purposes at that 23 point? 24 A. My position was to show, to 25 prevail on that grievance, to show a</p>	<p>1 think. That's my response, that's how I 2 think and knowing that seven days of 3 seniority remains, my seniority recall 4 rights, everything else, seven days away 5 to help them get to a decision real 6 fast, pay me, discuss layoff issues and 7 everything else, union contract, the 8 trusteeship, the removal of the union 9 people, new employees, other employees 10 doing work out of classification, all 11 that, because that's how I think. 12 That's why I did that. I pretyped this 13 letter ahead of time and came in and 14 passed it out to every one of them at 15 the table. That was my position 16 statement. 17 Q. So let's look at the 18 seniority list that is attached to 19 Deposition Exhibit 34 -- 20 A. Yes. 21 Q. -- but you're saying that 22 was not part of the September 14 letter 23 that you represented? 24 A. That's what we found out 25 that day. I don't think they give me</p>
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<p>1 prevailing case and I thought I did for 2 my grievance. 3 Q. And my question is different. 4 You referenced permanent layoff, I asked 5 you why you even thought permanently 6 layoff would a subject to be discussed 7 at the September 14, 2010 meeting and 8 you responded because your one year 9 period was almost up and you made some 10 characterizations about the company -- 11 A. Sure. 12 Q. -- and that's why you said 13 you raised it. So I'm clarifying in 14 saying, so you raised the subject of 15 permanent layoff because you believed 16 under the terms of the contract one year 17 of layoff was about to expire and as of 18 September 21st, 2010 you would be, using 19 your words, done for all purposes? 20 A. Rephrase that. 21 Q. I really can't. 22 MS. MCARDLE: I really can't. 23 Can you read that back, please? 24 (Record read.) 25 A. Okay. That's the way I</p>	<p>1 the list until after, the union mailed 2 it to me. 3 - - - - - 4 (Thereupon, Deposition 5 Exhibit-35 was marked for 6 purposes of identification.) 7 - - - - - 8 Q. Let's do this then, please 9 take the list off of Exhibit 34. 10 A. Yeah. 11 Q. And put Exhibit 35 at the 12 bottom of the first page of the list 13 and we'll introduce these separately. 14 Showing you what's been marked 15 Deposition Exhibit 35, this is a copy of 16 the layoff -- excuse me, the seniority 17 list that you received at the September 18 14, 2010 meeting, correct? 19 A. Say that again. 20 Q. Showing you what's been 21 marked Deposition Exhibit 35, this is a 22 copy of the seniority list that you said 23 you received on September 14, 2010, 24 correct? 25 A. They didn't give it to me.</p>



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<p>1 I was able to look at it that day, 2 correct. 3 Q. If you need to look at this 4 list to refresh your recollection, 5 please do so. 6 A. Sure. 7 Q. But please identify all the 8 employees that you claim were performing 9 your job. 10 A. I can only assume, I wasn't 11 there. 12 Q. So you have no personal 13 knowledge of anyone on this list who was 14 performing your job while you were on 15 layoff, correct? 16 A. It could be any one of them. 17 Q. Now, you referenced also 18 earlier in your testimony that the 19 company hired other warehouse 20 individuals while you were on layoff. 21 Would you please turn to the second page 22 of the exhibit, which is the seniority 23 by department list, you are the least 24 senior employee listed under warehouse, 25 correct?</p>	<p>1 2010? 2 A. Yeah, I looked right at it. 3 Q. And who has less seniority 4 who holds the position as warehouse 5 loader? 6 A. I always been number five 7 and I count one, two, three, four, five. 8 There's Tony Nicastro who has been 9 utility, gets less pay than me, starts 10 earlier than me and on this date, 11 9-14-2010, it's a warehouse, new 12 contract ratified in March 2010, 13 supposed to have seniority updates. I 14 just don't know why he's in the 15 warehouse and no utility classification. 16 And if he did get in the warehouse his 17 classification department seniority is 18 incorrect. 19 Q. On what basis do you believe 20 his seniority is incorrect? 21 A. Well, when I was hired in 22 July of 2007 he was utility. 23 Q. And my question is different. 24 You said if he was in the warehouse his 25 seniority is incorrect. On what basis</p>
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<p>1 A. After studying that yes, 2 correct. Interesting. 3 Q. And if you flip to the first 4 page of Deposition Exhibit 35, this is 5 the plant-wide seniority list and 6 numbers 21 through 30 are all identified 7 as merchandisers, correct? 8 A. Yes. 9 Q. And looking at the plant-wide 10 seniority list you are the least senior 11 warehouse person, number 19 on this 12 list, correct? 13 A. I would have to disagree. 14 May I separate this so I can look at 15 them side-by-side? 16 Q. My question is really looking 17 at the plant-wide seniority list, which 18 is the first page of Deposition Exhibit 19 35, you are the least senior warehouse 20 employee listed on this list, correct? 21 A. On this document, yes. 22 Q. Do you believe that there's 23 something on the second page that would 24 show that you were not the least senior 25 warehouse employee as of September 14,</p>	<p>1 do you believe his seniority is 2 incorrect because he's in the warehouse? 3 A. Well, they would have to 4 post a job for him to take a warehouse 5 job. The company would have to post an 6 opening or if they -- what's the word 7 I'm looking for -- relieve a position or 8 get rid of a position they still have 9 to post for other people. Even the 10 annual job bidding, everybody has to get 11 reassigned in seniority classifications. 12 For example, you can look at the 13 department seniority under Kevin 14 Sypherd, department seniority date 15 6-21st-2010, date of hire 7-21st-2003. 16 I mean, his status is incorrect. 17 Q. Do you know why Mr. 18 Sypherd's status shows 6-21-210 for 19 department seniority? 20 A. Looking at this, my educated 21 guess is -- 22 Q. I don't want your guess, I 23 want knowledge. Do you know why Mr. 24 Sypherd's department seniority is listed 25 as 6-21-2010?</p>



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<p>1 A. What department, doesn't say 2 what department he's in there. 3 Q. My question again is, do you 4 know why Mr. Sypherd's department 5 seniority is listed as 6-21-2010? 6 A. He got hired as a driver. 7 MS. MCARDLE: Mike? 8 MR. ROSSI: Yes? 9 MS. MCARDLE: Would you please 10 have your witness answer the questions? 11 Q. My question is really, really 12 simple, Mr. Potts. 13 A. Okay. 14 Q. Do you know why Mr. 15 Sypherd's department seniority is listed 16 as 6-21-2010? 17 A. Do I know why it's listed? 18 Q. Yes, as that date, do you 19 know why? 20 A. Because he's a driver, 21 obviously he's a driver. 22 Q. Do you have personal 23 knowledge about why Mr. Sypherd's 24 seniority date is listed as 6-21-2010? 25 A. Yeah.</p>	<p>1 simple. 2 A. Okay. 3 Q. You testified that if there 4 was an open position the company would 5 have to post that position? 6 A. Yeah. 7 Q. And I'm asking you where you 8 have come up with that information that 9 the company is required to post a 10 position that is open? 11 A. The CBA. 12 Q. So you would defer to the 13 terms of collective bargaining agreement 14 for whatever the company is or is not 15 supposed to do with regards to posting 16 an open position, correct? 17 A. Say that again, please. 18 Q. You would defer to the terms 19 of the collective bargaining agreement 20 as to what the company is or is not 21 supposed to do with regards to posting a 22 position, correct? 23 A. You can say that. And 24 annual job bidding. 25 Q. Looking at Deposition Exhibit</p>
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<p>1 Q. What's that knowledge? 2 A. I seen him. 3 Q. You seen him what? 4 A. Out in public. I had a 5 conversation with him, engaged him in 6 dialogue. 7 Q. And he told you why his 8 seniority date is 6-21-2010? 9 A. He told me he got hired as a 10 driver. I said congratulations. Same 11 at the gas station. 12 Q. Have you ever seen Mr. 13 Sypherd's personnel file? 14 A. No. 15 Q. And on what basis are you 16 making your statements that the company 17 would post positions that became 18 available, is that because of something 19 in the collective bargaining agreement? 20 A. Well, I don't see utility 21 looking at this seniority. 22 Q. That's not my question, Mr. 23 Potts. 24 A. I'm sorry. 25 Q. My question again is very</p>	<p>1 33, you've highlighted a portion of the 2 first page of the document, it's within 3 a paragraph that states -- I'm sorry, do 4 you have the document in front of the 5 you? 6 A. I have it now, yes. 7 Q. It's in a paragraph that 8 states, "The company acknowledges that 9 with nearly a year now passing the 10 situation may result in a loss of 11 seniority. To avoid this possibility 12 (and in consideration of the fact it has 13 been over a year) the company is willing 14 to now consider this a 'permanent 15 layoff' effective October 15, 2010." 16 Did I read that correctly? 17 A. Word for word. 18 Q. Did you ask ABC what it 19 meant by that it is willing to now 20 consider this a permanent layoff 21 effective October 15, 2010? 22 A. Say that again, please. 23 Q. Did you ask the company, 24 after you received and read this letter, 25 what it meant by the statement it is</p>



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<p>1 willing to now consider this a permanent 2 layoff effective October 15, 2010? 3 A. I only sent a letter for 4 seniority status and Mr. Bobal wouldn't 5 respond to me, he said don't talk to 6 him, so no. 7 Q. He said go to your union, 8 correct? 9 A. That was it, yes. 10 Q. So, again, you did not ask 11 the company what it meant by the 12 statement it is now willing to consider 13 this a permanent layoff effective 14 October 15, 2010, correct? 15 A. Say that again. 16 Q. You did not ask the company 17 what it meant by the statement it is 18 now willing to consider this a permanent 19 layoff effective October 15, 2010? 20 A. Yeah, the attempt was 21 referred to the union. 22 Q. You didn't ask the company, 23 correct? 24 A. In writing, yeah. 25 Q. You just told me you sent a</p>	<p>1 already lost, I don't have any seniority 2 rights. 3 Q. Do you know whether -- I'm 4 sorry. Go ahead. 5 A. 9-21st-2010 I have no 6 seniority rights. 7 Q. Correct, as under the terms 8 of the contract as of 9-21-2010 you were 9 going to lose your seniority, correct? 10 A. I already lost them because 11 on this date, they determined on that 12 date that the layoff was temporary. 13 Q. Mr. Potts, I really would 14 ask you, if you listen then we'll get 15 through this a lot faster. 16 A. I'm sorry. 17 Q. I said as of September 21st, 18 2010 you were losing your seniority 19 rights, correct? 20 A. They're gone, correct. 21 Q. Do you know whether ABC 22 eliminated a warehouse position around 23 that time? 24 A. Had to be me. 25 Q. Not my question. Do you</p>
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<p>1 letter to the union? 2 A. I didn't say that. I said I 3 sent a letter to Mr. Bobal asking him 4 what my seniority status was, what my 5 rank is on the list. 6 Q. And in that letter you asked 7 him what did you mean by this statement 8 the company is now willing to consider 9 this a permanent layoff effective 10 October 15, 2010? 11 A. That's my way of speaking 12 and communicating, that's why I even -- 13 with the grievance, I said permanent. 14 That's the way I think. 15 Q. So you didn't ask him that 16 question? 17 A. I though I was. 18 Q. Those words did not appear 19 in your letter, correct? 20 A. What words? 21 Q. What does the company mean 22 by the fact it's now willing to consider 23 this a permanent layoff effective 24 October 15, 2010. 25 A. No, because seniority is</p>	<p>1 know whether ABC eliminated a warehouse 2 position, not an individual but a 3 position at the company around that 4 time? 5 A. I don't know. 6 Q. Do you know whether ABC 7 eliminated a warehouse position at any 8 time between September of 09 and 9 September 2010? 10 A. Say that again. 11 Q. Do you know whether ABC 12 eliminated a warehouse position at any 13 time between September of 09 and 14 September 2010? 15 A. No, not aware, nothing 16 posted. 17 Q. So with this offer of 18 converting your layoff to a permanent 19 layoff effective October 15, 2010, in 20 essence this was reviving your 21 seniority, correct? 22 A. No. 23 Q. Well, what did you understand 24 the next sentence to mean which says, 25 "This will allow the grievant the</p>



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<p>1 opportunity to exercise his contractual 2 rights to bump by seniority and 3 classifications until the least senior 4 employee is displaced?" 5 A. I don't have any contractual 6 rights to bump on seniority and 7 classifications. 8 Q. So the company was actually 9 extending you that right, correct? 10 A. No. They were -- if you 11 read, they're actually making me like a 12 new employee, a new hire to make an 13 application for a position in 14 merchandising, in which at that meeting, 15 9-14-2010, Mr. Bobal himself says I'm 16 not qualified. 17 Q. So with the company stating 18 in this correspondence this will allow 19 the grievant the opportunity to exercise 20 his contractual right to "bump by 21 seniority and classifications until the 22 least senior employee is displaced," you 23 did not understand that to mean that you 24 could bump a lesser senior employee? 25 A. I can't.</p>	<p>1 A. I sent him the letter to ask 2 where my rank is in the -- 3 Q. Did you ever ask Mr. Bobal 4 how could I possibly bump a less senior 5 employee if I have no seniority? 6 A. I wish I got the 7 opportunity, no. 8 Q. Looking at Deposition Exhibit 9 35, first page, the individuals on the 10 first page numbered 21 through 30, you 11 would agree with me, have a hire date 12 after your hire date, correct? 13 A. Say that again. 14 Q. The individuals on page 1 of 15 Deposition Exhibit 35 are listed as 21 16 through 30, you would agree with me, 17 have a hire date after your hire date, 18 correct? 19 A. Yeah, 20 through 30, yes. 20 Q. Do you have a CDL driver's 21 license? 22 A. No. 23 Q. You filed another grievance 24 on September 21st, 2010, correct? 25 A. Correct. 11824, grievance</p>
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<p>1 Q. I'm not asking what you 2 could or couldn't do, I'm asking you 3 what you understood the company was 4 offering you? 5 A. There is no offer. I don't 6 -- obviously, there's a lot of confusion 7 there. 8 Q. There apparently is because 9 you have testified as of September 21st, 10 2010 you had lost your seniority, 11 correct? 12 A. Yeah. 13 Q. However, the company is 14 willing to consider this a permanent 15 layoff effective October 15, 2010 to 16 allow you to exercise contractual rights 17 to bump by seniority? 18 A. Yeah. 19 Q. Did you ask Mike what are 20 you talking about? 21 A. No, because it was withdrew, 22 this agreement was withdrawn. 23 Q. Did you ask Mike at any time 24 how could I possibly bump a less senior 25 employee if I don't have seniority?</p>	<p>1 number. 2 Q. I'm sorry, returning to 3 Deposition Exhibit 33 for a moment. 4 A. Yes. 5 Q. So as you sit here today 6 it's your testimony that at no time did 7 you understand that the company was 8 making an offer to you to permit you to 9 exercise seniority rights past September 10 21st, 2010? 11 A. Correct. And that grievance 12 was withdrawn October of 2010 as well. 13 MR. ROSSI: Wait for a question. 14 THE WITNESS: I'm sorry. 15 - - - - - 16 (Thereupon, Deposition 17 Exhibit-36 was marked for 18 purposes of identification.) 19 - - - - - 20 Q. Showing you what's been 21 marked as Deposition Exhibit 36, this is 22 correspondence from you to Teamsters 23 Local 377 dated October 2nd, 2010, and 24 we have your signature -- 25 A. Yeah --</p>



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<p>1 Q. -- on this one?</p> <p>2 A. -- subscribed upon it, yeah.</p> <p>3 Q. Did you write this</p> <p>4 correspondence?</p> <p>5 A. Yeah.</p> <p>6 Q. Is everything contained in</p> <p>7 this correspondence true and accurate?</p> <p>8 A. Yeah. First time I told</p> <p>9 them to withdraw it so we can go to the</p> <p>10 layoff issues in 11824, absolutely.</p> <p>11 Q. You then filed yet another</p> <p>12 grievance on October 13th, 2010,</p> <p>13 correct?</p> <p>14 A. The union filed it on my</p> <p>15 behalf, 49 something, 4982 or 4959.</p> <p>16 That's it.</p> <p>17 Q. And -- 4956?</p> <p>18 A. 4956, I was close.</p> <p>19 Q. And you authorized the union</p> <p>20 to file the grievance on your behalf?</p> <p>21 A. Yeah, they made me sign it</p> <p>22 right there.</p> <p>23 Q. Well, did you protest signing</p> <p>24 the grievance, you didn't want to do it?</p> <p>25 A. They -- Justin drafted that.</p>	<p>1 that, yeah, I agree with it, I just</p> <p>2 wish they would have had more.</p> <p>3 - - - - -</p> <p>4 (Thereupon, Deposition</p> <p>5 Exhibit-38 was marked for</p> <p>6 purposes of identification.)</p> <p>7 - - - - -</p> <p>8 Q. Showing you what's been</p> <p>9 marked as Deposition Exhibit 38, it's a</p> <p>10 copy of correspondence that you sent to</p> <p>11 Mr. Mike Bobal on October 15th, 2010,</p> <p>12 subject line re: Permanent layoff, is</p> <p>13 that your signature?</p> <p>14 A. Yeah, yeah, subscribed</p> <p>15 myself.</p> <p>16 Q. You say, "Dear Michael, as</p> <p>17 you know, I have been provided with</p> <p>18 pertinent information regarding a notice</p> <p>19 of permanent layoff effective October</p> <p>20 15, 2010," correct?</p> <p>21 A. Correct.</p> <p>22 Q. And the first time you're</p> <p>23 contacting Mr. Bobal and writing about</p> <p>24 the notice you received about permanent</p> <p>25 layoff effective October 15, 2010 is in</p>
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<p>1 Q. Did you protest signing the</p> <p>2 agreement?</p> <p>3 MR. ROSSI: Answer the question,</p> <p>4 Robert.</p> <p>5 A. No, no.</p> <p>6 - - - - -</p> <p>7 (Thereupon, Deposition</p> <p>8 Exhibit-37 was marked for</p> <p>9 purposes of identification.)</p> <p>10 - - - - -</p> <p>11 Q. This is Deposition Exhibit</p> <p>12 37, is this a copy of that grievance?</p> <p>13 A. Yes.</p> <p>14 Q. And that's your signature on</p> <p>15 the --</p> <p>16 A. Yes.</p> <p>17 Q. -- bottom left-hand corner?</p> <p>18 A. Absolutely.</p> <p>19 Q. Did you disagree with the</p> <p>20 contents of the grievance?</p> <p>21 A. It didn't raise the issue</p> <p>22 about annual bidding, I wish it would of</p> <p>23 because it was up and that meeting got</p> <p>24 cut short on 9-14-2010, but using</p> <p>25 workers out of classification and all</p>	<p>1 fact on October 15, 2010, correct?</p> <p>2 A. There you go, correct.</p> <p>3 Q. Then it goes on to say what</p> <p>4 you said earlier that you're asking</p> <p>5 about your status on the plant-wide</p> <p>6 seniority list, correct?</p> <p>7 A. Absolutely.</p> <p>8 Q. You would agree with me also</p> <p>9 that in this October 15, 2010</p> <p>10 correspondence to Mr. Bobal, Deposition</p> <p>11 Exhibit 38, you nowhere mention the</p> <p>12 merchandising position, correct?</p> <p>13 A. Correct. Mr. Bobal himself</p> <p>14 said I wasn't qualified 9-14-2010.</p> <p>15 Q. When did Mr. Bobal -- strike</p> <p>16 the question, please. What did Mr.</p> <p>17 Bobal say in the 9-14-2010 meeting about</p> <p>18 your qualifications for the</p> <p>19 merchandising position?</p> <p>20 A. That was it, he said I</p> <p>21 wasn't qualified.</p> <p>22 Q. Did you ask him what he</p> <p>23 meant by that?</p> <p>24 A. No, the union guy was</p> <p>25 arguing, he told him make me a</p>



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<p>1 merchandiser and he yelled he's not 2 qualified. 3 Q. So you would agree with me 4 that Deposition Exhibit 33 is dated 5 September 30th, 2010 which is after 6 September 14, 2010, correct? 7 A. Say that again, please. 8 Q. Deposition Exhibit 33, you 9 would agree with me, is dated September 10 30th, 2010 which is after September 14, 11 2010? 12 A. Yeah. 13 Q. Did you ask Mr. Bobal, hey, 14 you told me I wasn't qualified on 15 September 14th but now you're telling me 16 I can have a merchandising position in 17 your 9-30 correspondence? 18 A. I didn't ask because I 19 withdrew the grievance, the wage claim 20 was withdrawn and -- 21 Q. I'm not talking about the 22 grievance. 23 A. Oh, okay. I'm sorry. 24 Q. This is separate. 25 A. Sure.</p>	<p>1 A. That was my only watch at 2 the time, looking for my seniority 3 rights, until 9-21st-2010. I knew I 4 didn't have to worry about anything 5 inside seniority. Whatever they done, I 6 know I got recourse, grievance 7 procedure, company counsel in Texas, I 8 got everything to address that inside 9 that date. I have protection of the 10 CBA. Outside of that, I don't have 11 anything. 12 Q. And in response to Deposition 13 Exhibit 38 that you sent to Mr. Bobal 14 he asked you to contact the union 15 regarding that matter? 16 A. Yes, he said don't call him, 17 write him, et cetera, et cetera. 18 - - - - - 19 (Thereupon, Deposition 20 Exhibit-39 was marked for 21 purposes of identification.) 22 - - - - - 23 Q. Showing you what's been 24 marked Deposition Exhibit 39, it's a 25 copy of a letter to the union dated</p>
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<p>1 Q. Did you ask Mr. Bobal, hey, 2 on September 14th you said I wasn't 3 qualified for a merchandiser position, 4 why are you offering me one on 9-30? 5 A. In Exhibit -- I can't read 6 this. 7 Q. 38? 8 A. 38, that's my way of asking 9 him. 10 Q. But you didn't ask that 11 question, correct, you're asking about 12 your placement on the plant-wide 13 seniority list? 14 A. I need to know before I 15 expand upon my inquiry. I can't inquire 16 if I don't know. And on 9-30 nobody 17 knew the layoff was temporary either 18 until that date. 19 Q. When is the first time you 20 believed that -- strike the question, 21 please. When you say no one knew it 22 was temporary as of that date, you're 23 referring back to your earlier testimony 24 that because your one year period was 25 about to expire on 9-21?</p>	<p>1 October 18th, 2010 from you with your 2 signature, correct? 3 A. Yes. 4 Q. You would agree with me that 5 in this correspondence to the union, no 6 mention of the merchandising position, 7 correct? 8 A. Correct. The grievance was 9 already withdrawn. 10 Q. I don't understand why you 11 keep saying the grievance is already 12 withdrawn when this is a separate 13 matter. 14 A. I'm sorry, I won't speak of 15 it no more. I'm new to this. I 16 appreciate your latitude. Thank you. 17 - - - - - 18 (Thereupon, Deposition 19 Exhibit-40 was marked for 20 purposes of identification.) 21 - - - - - 22 Q. Handing you what's been 23 marked Deposition Exhibit 40, 24 correspondence from Mr. Bobal dated 25 November 10th, 2010 to you at your</p>



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<p>1 Jeanette Drive address.</p> <p>2 A. Okay.</p> <p>3 Q. Did you receive this</p> <p>4 correspondence?</p> <p>5 A. No.</p> <p>6 Q. That's because you didn't</p> <p>7 sign for the certified mailing, correct?</p> <p>8 A. I didn't receive it, I</p> <p>9 didn't sign for any mailing on this</p> <p>10 date.</p> <p>11 Q. Well, there were several</p> <p>12 attempts made to have you sign for this</p> <p>13 correspondence and you refused to sign</p> <p>14 for it, correct?</p> <p>15 A. No, I didn't know about it.</p> <p>16 I was more than happy to sign for it.</p> <p>17 Q. So you're testifying under</p> <p>18 oath today that this is the first time</p> <p>19 you've ever seen this document?</p> <p>20 A. In the lawyer's office he</p> <p>21 showed it to me.</p> <p>22 Q. Were you aware of a meeting</p> <p>23 that was scheduled for October 21st with</p> <p>24 the company and the union and yourself?</p> <p>25 A. No.</p>	<p>1 Q. Yes. I'm looking at</p> <p>2 Deposition Exhibit 33. After the</p> <p>3 paragraph we've already read on page 1</p> <p>4 about bumping by seniority it goes on to</p> <p>5 say, "Should the grievant wish to pursue</p> <p>6 this course of action he needs to</p> <p>7 contact the company in writing</p> <p>8 expressing the desire within the 15</p> <p>9 working day period that this grievance</p> <p>10 answer is up for review." Do you see</p> <p>11 that?</p> <p>12 A. I see that.</p> <p>13 Q. And you did, in fact,</p> <p>14 contact the company on October 15, 2010</p> <p>15 and you didn't make any mention of the</p> <p>16 merchandising position, correct?</p> <p>17 A. No, because I can't bump, I</p> <p>18 want to know where my plant rank is and</p> <p>19 I wanted to bring up annual job bidding.</p> <p>20 I never got an annual job bidding from</p> <p>21 the beginning of that year in the new</p> <p>22 contract, the CBA.</p> <p>23 Q. So despite the fact the</p> <p>24 company was extending you the</p> <p>25 opportunity to bump you continued to</p>
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<p>1 Q. You were never aware of a</p> <p>2 meeting that was scheduled for October</p> <p>3 21st?</p> <p>4 A. I wish I was.</p> <p>5 Q. So your union didn't let you</p> <p>6 know that?</p> <p>7 A. I don't believe so, otherwise</p> <p>8 I'd have been there.</p> <p>9 Q. According to this</p> <p>10 correspondence Mr. Bobal is indicating</p> <p>11 that the grievance answer on grievance</p> <p>12 11823 sent to you on September 30, 2010</p> <p>13 gave you a 15 day review period to</p> <p>14 answer us if you wish the available</p> <p>15 merchandising job, do you see that?</p> <p>16 A. I see it now.</p> <p>17 Q. Well, it was also set forth</p> <p>18 in September 30th, 2010 correspondence</p> <p>19 to you as well, correct, which you did</p> <p>20 receive?</p> <p>21 A. No, not like that, after</p> <p>22 review. This letter here says there's</p> <p>23 an available merchandising position.</p> <p>24 Q. Which is this letter?</p> <p>25 A. Your Exhibit 40.</p>	<p>1 believe that you couldn't do so?</p> <p>2 A. That's not an extension. I</p> <p>3 can't. Bobal already said I'm not</p> <p>4 qualified, 9-14. In regard to this</p> <p>5 letter, Exhibit 40, if I would have got</p> <p>6 it I would have been more than happy to</p> <p>7 sign up and fill the application out for</p> <p>8 that position because I have no</p> <p>9 seniority and no rights.</p> <p>10 Q. I just want to make sure I</p> <p>11 understand then.</p> <p>12 A. Sure.</p> <p>13 Q. Looking at Deposition Exhibit</p> <p>14 33 --</p> <p>15 A. Yeah.</p> <p>16 Q. -- and you can read the</p> <p>17 paragraph on the first page that begins,</p> <p>18 "The company acknowledges --"</p> <p>19 A. Yeah.</p> <p>20 Q. "-- with nearly a year</p> <p>21 passing now."</p> <p>22 A. I lost seniority.</p> <p>23 Q. Which concludes with, "this</p> <p>24 would most logically be a merchandising</p> <p>25 position," you did not understand that</p>



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